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Report of the Committee against Torture

Thirty-seventh session
(6-24 November 2006)

Thirty-eighth session
(30 April-18 May 2007)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 18 May 2007, the closing date of the thirty-eighth session of the Committee against Torture, there were 144 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report, Andorra, Montenegro and San Marino have become parties to the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-seventh session (724th to 752nd meetings) was held at the United Nations Office at Geneva from 6 to 24 November 2006, and the thirty-eighth session (753rd to 780th meetings) was held from 30 April to 18 May 2007. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.724-780).

C. Membership and attendance at sessions

5. The membership of the Committee remained the same during the period covered by this report, with the exception of Mr. Julio Prado Vallejo who had resigned in March 2006. Mr. Luis Gallegos Chiriboga of Ecuador was nominated to replace Mr. Prado Vallejo. The list of members with their term of office appears in annex IV to the present report.

6. The Committee expressed its deep sorrow at the death of Mr. Julio Prado Vallejo. Mr. Prado Vallejo played a valuable role in his country and in international bodies, in the international human rights field where he was a member of the Human Rights Committee, the Inter-American Commission for Human Rights and the Committee against Torture. He will be missed by all who were fortunate enough to work with him, for his competence, courtesy and his friendly personality.

D. Solemn declaration by the newly elected and re-elected members

7. During the thirty-seventh session, at the 724th meeting on 6 November 2006, Mr. Luis Gallegos Chiriboga, of Ecuador, designated to replace Mr. Julio Prado Vallejo, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Agendas

8. At its 724th meeting, on 6 November 2006, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/37/1) as the agenda of its thirty-seventh session.

9. At its 753rd meeting, on 30 April 2007, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/38/1) as the agenda of its thirty-eighth session.

F. Pre-sessional working group

10. During the period under review, the pre-sessional working group did not meet. The Committee instead used the time usually allocated to the pre-sessional working group to meet in plenary session in November 2006 with a view to advancing its work regarding reports awaiting consideration and to address the backlog of reports under article 19.

G. Participation of Committee members in other meetings

11. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights: the Fifth Inter-Committee Meeting, held from 19 to 21 June 2006, was attended by Ms. Belmir, Ms. Sveaass and Mr. Mavrommatis; the latter also participated in the Eighteenth Meeting of Chairpersons from 22 to 23 June 2006. Ms. Gaer and Mr. Grossman participated in the informal brainstorming meeting on treaty body reform that was held in Liechtenstein from 14 to 16 July 2006. On 27 and 28 November 2006, Ms. Gaer participated in the first meeting of the working group on harmonization of working methods of treaty bodies. Ms. Nora Sveaass participated in the seminar on recommendations of United Nations expert bodies, held in Geneva from 9 to 10 November 2006. From 8 to 9 December 2006, Mr. Camara participated in the second meeting of the working group on reservations. From 15 to 16 May 2007, Mr. Camara attended the meeting of the International Law Commission with the treaty bodies.

H. General comments

12. At its thirty-seventh and thirty-eighth sessions, the Committee undertook two readings of the draft general comment on the implementation of article 2 of the Convention by States parties. The draft general comment addresses the three parts of article 2, each of which identifies distinct interrelated and essential principles that underpin the Convention's absolute prohibition of torture. The Committee has sent the draft general comment to all stakeholders, States parties, treaty bodies, United Nations agencies and non-governmental organizations (NGOs) requesting comments. These will be consolidated and considered when the Committee undertakes its final reading in November 2007. The draft general comment has been placed on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

I. Activities of the Committee in connection with the Optional Protocol to the Convention

13. The Chairperson of the Committee, Mr. Mavrommatis, attended the first session of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 19 to 23 February 2007.

J. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

14. The following statement was adopted to be issued on 26 June 2007, the International Day in Support of Victims of Torture:

> "We welcome the entry into force, last year, of the Optional Protocol to the Convention against Torture as an historic step in the fight against torture and other forms of ill-treatment. This Protocol provides for the establishment of independent national preventive mechanisms empowered to undertake visits to places of detention. The Optional Protocol deserves all possible support from States, the United Nations and civil society.
>
> The past year saw another welcome landmark: the adoption by the General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearance. In view of the strong links between torture and enforced disappearances, this treaty brings hope to many who have despaired of the fate of their loved ones.
>
> This year the United Nations International Day in Support of Victims of Torture coincides with the twentieth anniversary of the entry into force of the Convention against Torture. During the past 20 years, this instrument has served to strengthen efforts to prevent torture and support victims. However its universal ratification is still to be achieved.
>
> We call on all States to become party to the Convention against Torture and make the declarations provided under articles 21 and 22 of the Convention, on inter-State and individual complaints, in order to maximize transparency and accountability in their fight against torture. States must also cooperate in good faith with the Committee against Torture in implementing its views and recommendations, including in its inquiry capacity.
>
> It is a matter of grave concern that some States have disregarded the Committee's requests not to deport or remove individuals to countries where they run the risk of being tortured. We stress that such actions nullify the effective exercise of the international right of individual petition and seriously undermine the protection of the rights enshrined in the Convention. We remind States that have accepted the competence of the Committee against Torture to receive individual communications that they are bound to cooperate with the Committee in applying and giving full effect to the individual complaints procedure.

The application of the death penalty in many parts of the world continues to concern us as persons on death row and executed persons, as well as the members of their families, are, under certain circumstances, also victims of torture. Irrespective of whether the death penalty is considered lawful or not under international law, many issues regarding its application may be contrary to international norms against torture and other cruel, inhuman or degrading treatment or punishment. In itself, the holding of persons on death row for extended periods, often gives rise to cruelty and inhumanity. The failure to notify prisoners and family members until the last moment, if at all, that the death penalty will be carried out, is unacceptable treatment. The act of execution itself is frequently carried out in circumstances that are degrading and fail to respect the inherent dignity of the person, thus breaching international law. Given these many problems, we call on all States that continue to apply the death penalty to consider a moratorium on its use.

On this International Day in Support of Victims of Torture, we pay tribute to all governments, civil society organizations and individuals engaged in activities aimed at preventing torture, punishing it and ensuring that all victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. We express our gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture and hope that contributions to the Fund will continue to increase, so that more victims of torture and members of their families can receive the assistance they need. We call on all States, in particular those which have been found to be responsible for widespread or systematic practices of torture, to contribute to the Voluntary Fund as part of a universal commitment for the rehabilitation of torture victims."

K. Informal meeting of the Committee with the States parties to the Convention

15. On 15 May 2007, the Committee held an informal meeting with representatives of 43 States parties to the Convention. The Committee and the States parties discussed the following issues: methods of work; targeted reports or lists of issues prior to the submission of periodic reports (see paragraphs 21, 22 and 23); follow-up to articles 19 and 22 of the Convention; compliance by States parties with interim measures; the draft general comment on article 2; the relationship between the Committee against Torture and the Subcommittee on Prevention of Torture; and the possible enlargement of the membership of the Committee against Torture, as well as additional meeting time (i.e. a third session per year)

L. Participation of non-governmental organizations and national human rights institutions

16. In 2005, the Committee began to meet with non-governmental organizations (NGOs) in private, with interpretation, on the afternoon immediately before the consideration of each State party's report under article 19 of the Convention. The Committee considers that this new practice, which has replaced the lunchtime briefings that did not have interpretation, is more useful, as all members are able to follow the discussion. The Committee expresses its

appreciation to the NGOs, for their participation in these meetings and is particularly appreciative of the attendance of national NGOs, which often provide immediate and direct information.

17. Similarly, the Committee met during 2005 with the national human rights institutions (NHRI) where these existed, of the countries it has considered. Meetings with each NHRI which attends take place, in private, usually on the day before consideration of the State party.

18. The Committee is extremely grateful for the information it receives from these institutions, and looks forward to continuing these national practices, which have enhanced its understanding of the information before the Committee.

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

19. During the period covered by the present report nine reports from States parties under article 19 of the Convention were submitted to the Secretary-General. An initial report was submitted by Serbia and Montenegro.[1] Second periodic reports were submitted by Belgium, Costa Rica, Kazakhstan, Lithuania, Slovakia and The former Yugoslav Republic of Macedonia. A fourth periodic report was submitted by Israel. A fifth periodic report was submitted by Chile.

20. As of 18 May 2007, the Committee had received a total of 203 reports.

21. As at 18 May 2007, there were 232 overdue reports (see annex V).

22. The Committee with only two sessions per year is only able to deal with 14 reports, consequently, over the last two years and as an exceptional measure, it has decided to consolidate overdue reports. This measure is reviewed on a case-by-case basis after the consideration of a report, in particular when the Committee considers that the information provided by the State party covers the entire overdue reporting period. The Committee indicates the new date and number of report that the State party should submit in the last paragraph of the concluding observations.

23. At its thirty-eighth session in May 2007, the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report. The State party's replies to the list of issues would constitute the State party's report under article 19 of the Convention. The Committee is of the view that this procedure could assist States parties in preparing focused reports. The lists of issues prior to reporting could guide the preparation and content of the report, and the procedure would facilitate reporting by States parties and strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.

24. The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010. It will not be applied to States parties' reporting obligations where initial reports are concerned or to periodic reports for which a previous report has already been submitted and is awaiting consideration by the Committee. On 15 May 2007, the Committee met with States parties and introduced and discussed the new procedure. The Committee envisages adopting lists of issues for States parties whose reports are due in 2009, at its upcoming session in November 2007. The lists of issues will thereafter be transmitted to the respective States parties in December 2007, with a request that replies be submitted before the end of 2008, should the State party wish to avail itself of this new procedure.

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[1] See CAT/C/SRB/2 received prior to the declaration of independence by Montenegro in June 2006.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

25. At its thirty-seventh and thirty-eighth sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-seventh session:

Burundi	Initial	CAT/C/BDI/1
Guyana	Initial	CAT/C/GUY/1
Hungary	Fourth periodic	CAT/C/55/Add.10
Mexico	Fourth periodic	CAT/C/55/Add.12
Russian Federation	Fourth periodic	CAT/C/55/Add.11
South Africa	Initial	CAT/C/52/Add.3
Tajikistan	Initial	CAT/C/TJK/1

26. The following reports were before the Committee at its thirty-eighth session:

Denmark	Fifth periodic	CAT/C/81/Add.2
Italy	Fourth periodic	CAT/C/67/Add.3
Japan	Initial	CAT/C/JPN/1
Luxembourg	Fifth periodic	CAT/C/81/Add.5
The Netherlands	Fourth periodic	CAT/C/67/Add.4
Poland	Fourth periodic	CAT/C/67/Add.5
Ukraine	Fifth periodic	CAT/C/81/Add.1

27. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its conclusions and recommendations.

28. Country rapporteurs and alternate rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex VI to the present report.

29. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

30. The Committee has adopted a new format for these as a result of consultations held by the Inter-Committee Meeting and the meeting of Chairpersons of the human rights treaty bodies. The text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned States parties' reports is reproduced below.

31. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands States parties wish to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless has to point out that the drafting of lists of issues has increased the Committee's workload substantially. This is particularly significant in a Committee with such a small membership.

32. Burundi

(1) The Committee considered the initial report of Burundi (CAT/C/BDI/1) at its 730th and 733rd meetings, held on 9 and 10 November 2006 (CAT/C/SR.730 and 733), and, at its 745th meeting, held on 20 November 2006 (CAT/C/SR.745), adopted the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Burundi, which is in conformity with the Committee's guidelines for the preparation of initial reports, but regrets that the report was submitted 13 years late. The Committee notes with satisfaction the frankness with which the State party acknowledges the gaps in its legislation relating to the elimination and prevention of torture. It also appreciates the effort made by the State party to identify the corrective steps needed. The Committee also welcomes the constructive dialogue that was held with the high-level delegation sent by the State party, as well as the replies to the questions raised during the dialogue.

B. Positive aspects

(3) The Committee welcomes the signing, on 7 September 2006, of the ceasefire between the Government and the National Liberation Forces, which ended the armed conflict that has ravaged Burundi for almost 13 years.

(4) The Committee takes note of the statement made by the delegation of the State party concerning the planned revision of the Criminal Code, and its intention to include in the Code provisions criminalizing acts of torture and other cruel, inhuman or degrading treatment, including violence against women and children. The Committee also welcomes the delegation's announcement that the Code of Criminal Procedure will be reviewed in 2007.

(5) The Committee welcomes the establishment of the Ministry of Solidarity, Human Rights and Gender, the Government Commission on Human Rights and the Centre for the Promotion of Human Rights and the Prevention of Genocide.

(6) The Committee takes note of the announcement made by the delegation that the State party plans to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

(7) The Committee welcomes the announcement by the delegation of the State party concerning the recent ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

C. Subjects of concern and recommendations

(8) While it welcomes with satisfaction the planned revision of the Criminal Code, which should contain a definition of torture, as announced by the delegation of the State party, the Committee is concerned at the lack of provisions in the Criminal Code in force containing an explicit definition of torture and criminalizing torture, in accordance with articles 1 and 4 of the Convention. The Committee is also concerned at the lack of clarity with regard to the status of the Convention in Burundi's domestic law, and the fact that the Convention is not invoked before the competent judicial and administrative authorities (arts. 1 and 4).

> **The State party should take urgent measures to include in its Criminal Code a definition of torture that is in conformity with article 1 of the Convention, as well as provisions criminalizing acts of torture and imposing criminal penalties proportionate to the gravity of the acts committed. The State party should also clarify the status of the Convention in its domestic law in order to enable all persons who claim to have been subjected to torture to invoke the Convention before the competent judicial and administrative authorities.**

(9) While it welcomes the planned reform of Burundi's judicial system, which was announced by the delegation of the State party, the Committee notes with concern that the current provisions of the Code of Criminal Procedure relating to police custody do not explicitly refer to the notification of rights, including the presence of a lawyer from the first hours in police custody and the medical examination of persons held in police custody. The Committee is also concerned at the lack of provisions on legal aid for disadvantaged persons. Moreover, the Committee is concerned at the length of police custody, which can last as long as 14 days, a period that is not in keeping with the generally accepted international norms on the subject. Finally, the Committee is deeply concerned at reports that there have been several hundred cases of illegal detention owing to the fact that persons were held in police custody longer than the period authorized by law (arts. 2 and 11).

> **The State party should amend the provisions of the Code of Criminal Procedure relating to police custody in order to ensure the effective prevention of violations of the physical and mental integrity of persons held in police custody, including by guaranteeing their right to habeas corpus, the right to inform a close relation and the right to consult a lawyer and physician of their choice or an independent physician during the first hours in police custody, as well as access to legal aid for the most disadvantaged persons.**
>
> **The State party should, in addition, bring the practice of pretrial detention into conformity with the international standards relating to a fair trial and should ensure that the trial takes place within a reasonable time.**

(10) The Committee is alarmed at reports that torture is a widespread practice in the State party. According to these reports, which were not challenged by the delegation of the State party, several hundred cases of torture were registered between July 2005 and July 2006. Moreover, the Committee is deeply concerned at reports received concerning a high number of forced disappearances, arbitrary arrests and incommunicado detentions, the main perpetrators of which are allegedly officials of the National Intelligence Service. In this regard, the Committee is concerned at the dual mandate of the National Intelligence Service, which is responsible for State security and is also active in criminal investigation, since this entails the risk that the Service might be used as a means of political repression (art. 2).

> **The State party should take effective legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment in any territory under its jurisdiction, including by ensuring that military personnel are not in any way involved in the arrest and detention of civilians. The State party should take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture. It should also include in its domestic legislation a provision clearly stipulating that an order from a superior officer or a public authority may not be invoked as a justification of torture.**

Moreover, the State party should clarify, as a matter of urgency, the mandate of the National Intelligence Service within the framework of the ongoing reform of the judiciary in order to prevent any use of the Service as a means of political repression and ensure that its officials do not engage in criminal investigation.

(11) The Committee is alarmed at reports of large-scale sexual violence against women and children by State officials and members of armed groups, as well as at the systematic use of rape as a weapon of war, which constitutes a crime against humanity. In this regard, according to information received, a large number of victims of rapes were identified between October 2005 and August 2006. Moreover, the Committee is deeply concerned at the apparent impunity enjoyed by the perpetrators of such acts. The Committee is also concerned at the extrajudicial or amicable settlement of rape cases, including by the administrative authorities, when emphasis is placed on practices such as marriage between rapist and victim (arts. 2, 4, 12 and 14).

The State party should take vigorous measures to eliminate the impunity enjoyed by the perpetrators of acts of torture and ill-treatment, whether they are State officials or non-State actors; conduct timely, impartial and exhaustive inquiries; try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of the acts committed; and provide adequate compensation to the victims. Moreover, the State party should guarantee that victims have access to the means required for their fullest possible rehabilitation.

The State party should take the necessary measures to include in its Criminal Code a provision criminalizing acts of violence, including domestic violence and sexual violence, and especially rape, in accordance with article 4 of the Convention.

(12) The Committee is concerned at the judiciary's de facto dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction. In this regard, the Committee is concerned at the decision of the Attorney-General overruling the Supreme Court's decision to release on bail the seven persons, including the former transitional President, Mr. Domitien Ndayizeye, who were being held for attempting a coup.[2] The Committee is also concerned at reports that several of the detainees have been tortured. Lastly, the Committee is concerned at the fact that the Attorney-General is able, in certain circumstances, to influence judicial decisions (arts. 2 and 12).

The State party should adopt effective measures to guarantee the independence of the judiciary in accordance with the relevant international norms. The State party should also conduct an immediate and impartial inquiry pursuant to reports that several of the persons detained for allegedly attempting a coup were subjected to torture. The State party should also fulfil its obligation to respect the decisions of the Supreme Court.

(13) The Committee takes note of the delegation's announcement that the State party intends to raise the age of criminal responsibility from 13 to 15 years. The Committee is nevertheless concerned at the absence of a juvenile justice system, and at the fact that children are often subject to the same procedures as adults. In this regard, the Committee notes with concern that a child accused of a criminal offence is obliged to wait for a very long time before being tried and that the length of pretrial detention for children often exceeds the length of the maximum prison terms that they could receive if found guilty (art. 2).

The State party should take the necessary measures to raise the minimum age of criminal responsibility in order to bring it into line with the generally accepted international norms on the subject. The State party should also guarantee the proper functioning of a juvenile justice system by treating minors in a manner appropriate to their age, in conformity with the United Nations Standard

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[2] Report of the Secretary-General to the Security Council on the United Nations Operation in Burundi (UNOB), S/2006/842, paras. 15-18, 25 October 2006.

Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Tokyo Rules).

(14) The Committee takes note of the Asylum Bill, prepared with the assistance of the Office of the United Nations High Commissioner for Refugees, which establishes a national commission for refugees with the authority to provide refugees and asylum-seekers with legal and administrative protection. The Committee also takes note of the statement by the delegation that only refugees and asylum-seekers wishing to return voluntarily to their country of origin are invited to do so. The Committee is nevertheless concerned that in June 2005, some 8,000 Rwandan asylum-seekers were returned to their country of origin. Moreover, the Committee is concerned that, since the State party does not have an extradition system, asylum-seekers or refugees from Rwanda and the Democratic Republic of the Congo could be returned to their countries of origin even though they risk being subjected to torture (art. 3).

The State party should take legislative and any other necessary measures to prohibit the expulsion, return or extradition of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture, in accordance with article 3 of the Convention. The State party should also guarantee absolute respect for their physical and mental integrity. In addition, the State party should take the necessary measures to adopt legislation on the protection of stateless persons in order to protect them from expulsion, return or extradition.

(15) The Committee notes that Burundi makes extradition contingent on the existence of an extradition treaty. The Committee is nevertheless concerned by the fact that the State party, when it receives a request for extradition from another State party with which it has no extradition treaty, does not invoke the present Convention as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention (art. 8).

The State party should take appropriate legislative and administrative measures to ensure that the present Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention, when it receives a request for extradition from another State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention.

(16) The Committee is concerned at the inadequacy of training for law enforcement personnel, which fails to focus on the elimination and prevention of torture. Moreover, the numerous allegations of acts of torture and cruel, inhuman or degrading treatment received by the Committee testify to the limited scope of such training (art. 10).

The State party should:

(a) Organize regular training for law enforcement personnel, including police and prison administration staff, in order to ensure that they all have a thorough understanding of the provisions of the Convention and are aware that violations are not acceptable and will be investigated, and that the perpetrators are liable to prosecution. All such personnel should be given specific training in methods of detecting torture. This training should also be accessible to physicians, lawyers and judges;

(b) Prepare a manual listing methods of questioning that are prohibited and contrary to the Standard Minimum Rules for the Treatment of Prisoners, as well as the fundamental principles governing the treatment of prisoners, including the obligation to keep a bound registration book with numbered pages containing information on each prisoner's identity, the reasons for his or her detention and the authority therefore, and the day and hour of his or her admission and release;

(c) Ensure that law enforcement personnel and members of the armed forces, as well as the general public, are aware of the prohibition on sexual violence, in particular against women and children;

(d) Encourage the involvement of non-governmental organizations active in the field of human rights protection in the training of law enforcement personnel.

(17) The Committee has taken note of the announcement by the delegation of the State party that the Government of Burundi has obtained assistance from the European Union in improving conditions of detention and bringing them into line with international standards. However, the Committee remains deeply concerned at the appalling detention conditions prevailing in Burundi, which amount to inhuman and degrading treatment. Such conditions include overcrowding, lack of food and medical care that puts lives at risk, poor hygiene and a shortage of material, human and financial resources. The treatment of prisoners remains a matter of concern for the Committee, in particular the fact that minors and women are not segregated from adults and men respectively, and that those awaiting trial are not segregated from convicted prisoners, except in Ngozi prison, where the men's quarters are separate from the women's and children's quarters (arts. 11 and 16).

The State party should adopt practices that are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons, including through the release of first-time offenders or suspects held in connection with petty offences, particularly if they are under 18 years of age, and the construction of new prison facilities.

The State party should also ensure that minors and women are segregated from adults and men respectively, and that those in pretrial detention are segregated from convicted prisoners. The State party should also ensure that women prisoners are guarded exclusively by female prison staff.

(18) The Committee is deeply concerned about the widespread sexual violence against women and children, particularly in places of detention (art. 11).

The State party should establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, investigating these complaints and providing victims with psychological and medical protection and care. The State party should consider adopting a national plan of action to eradicate violence against women and children.

(19) The Committee is concerned at the lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring. The Committee is also concerned at reports that non-governmental organizations have limited access to places of detention (art. 11).

The State party should consider establishing a national system to monitor all places of detention and follow up on the outcome of such systematic monitoring. It should also ensure that forensic doctors trained in detecting signs of torture are present during such visits. The State party should also strengthen the role of non-governmental organizations in this process by facilitating their access to places of detention.

(20) The Committee is deeply disturbed at reports of the murder of several people suspected of being supporters of the National Liberation Forces between November 2005 and March 2006, including Ramazani Nahimana, Jean-Baptiste Ntahimpereye and Raymond Nshimirimana. According to information received, those responsible for the murders are agents of the National Intelligence Service (art. 12).

The State party should inform the Committee in writing of steps taken to institute a prompt and impartial investigation of these murders and to punish the perpetrators, in accordance with article 12 of the Convention.

(21) The Committee takes note of the negotiations under way between the State party and the United Nations with regard to the implementation of the recommendation of the assessment mission dispatched by the Secretary-General to Burundi in May 2004, adopted by the Security Council in resolution 1606 (2005) and aimed at creating a truth commission of mixed composition and a special chamber within Burundi's court system. The Committee is nevertheless concerned at the absence of impartial inquiries to establish the individual responsibility of perpetrators of acts of torture and cruel, inhuman or degrading treatment, a situation that fosters a general climate of impunity.

The Committee is also concerned at the absence of any measures to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation following the lodging of a complaint or the provision of evidence, as a result of which there have been very few complaints of acts of torture or cruel, inhuman or degrading treatment (arts. 12 and 13).

> **The State party should take urgent steps to combat impunity, in particular by establishing transitional justice mechanisms, in particular a truth and reconciliation commission and a special court, as recommended by the Security Council in its resolution 1606 (2005).**
>
> **The State party should inform all persons under its jurisdiction, clearly and unequivocally, that it condemns torture and ill-treatment. It should take effective legislative, administrative and judicial measures to ensure that all allegations of torture and cruel, inhuman or degrading treatment will be the subject of prompt investigation, followed as appropriate by prosecution and punishment. All persons under suspicion of torture should be suspended from duty for the duration of the inquiry if it would place the investigation at risk for them to remain in their posts. In addition, the State party should take the necessary steps to shed light on the Gatumba massacre and punish those responsible.**

(22) The Committee is concerned at the system of assessing the appropriateness of prosecution, which leaves State prosecutors free to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention (art. 12).

> **The State party should consider introducing an exception to the current system of assessing the appropriateness of prosecution in order to conform with the letter and spirit of article 12 of the Convention and to remove all doubt regarding the obligation of the competent authorities to institute, systematically and on their own initiative, impartial inquiries in all cases where there are substantial grounds for believing that an act of torture has been committed.**

(23) The Committee takes note of the announcement by the delegation of the State party that a department to assist torture victims has been created within the Ministry of Solidarity, Human Rights and Gender. It also notes the State party's intention to set up a compensation fund for torture victims with assistance from the international community. The Committee is nevertheless concerned at the absence to date of any measures to compensate victims of torture in judicial practice in Burundi. The Committee is also concerned at the failure to provide victims, including child soldiers, with the means to exercise the right to the fullest possible physical, psychological, social and financial rehabilitation (art. 14).

> **The State party should take urgent steps to facilitate the establishment of a compensation fund for victims of torture. The State party should also provide victims, including child soldiers, with the means to exercise their right to the fullest possible rehabilitation, including physical, psychological, social and financial rehabilitation.**

(24) While the Committee notes with satisfaction that, under article 27 of the Code of Criminal Procedure, "if it is found or proven that confessions of guilt have been obtained under duress, they are declared null and void", it is disturbed at the Supreme Court ruling of 29 September 2002 to the effect that "a confession is … merely one piece of evidence that must be corroborated by other evidence", which could lead to the acceptance of confessions obtained under torture provided that they are corroborated by other evidence (art. 15).

> **The State party should take the necessary legislative and administrative measures to ensure that any statement that is found to have been made as a result of torture may not be directly or indirectly invoked as evidence in proceedings, in accordance with article 15 of the Convention.**

(25) The Committee notes with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, particularly those who report acts of torture and ill-treatment (arts. 2 and 16).

> **The State party should take effective steps to ensure that all persons reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences that they might suffer as a result of making such a report. The Committee encourages the State party to strengthen its cooperation with civil society in its efforts to prevent and eliminate torture.**

(26) The Committee is concerned at reports that hospitalized patients, including children, who are unable to pay their medical expenses are detained in hospitals for several months until they are able to pay. The Committee is alarmed at the conditions under which such patients are held, particularly the fact that they are denied food and medical treatment (art. 16).

> **The State party should take urgent steps to release persons detained in hospitals, in accordance with article 16 of the Convention and article 11 of the International Covenant on Civil and Political Rights, to which Burundi is a party, and which states that "no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation".**

(27) The Committee encourages the State party to continue to request technical cooperation from the Office of the United Nations High Commissioner for Human Rights in Burundi and from the United Nations Integrated Office in Burundi, which is to replace the United Nations Operation in Burundi on 1 January 2007.

(28) The State party should provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, and on the related investigations, prosecutions and criminal and disciplinary sanctions. Information is further requested on measures taken to compensate and provide rehabilitation services for the victims.

(29) The Committee is encouraged to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

(30) The State party is encouraged to disseminate widely the reports submitted by Burundi to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations, as contained in paragraphs 9, 10, 19, 20, 21, 23 and 25 above.

(32) The State party is invited to submit its second periodic report on 31 December 2008.

33. Guyana

(1) The Committee considered the initial report of Guyana (CAT/C/GUY/1) at its 734th and 737th meetings (CAT/C/SR.734 and 737), held on 13 and 14 November 2006, and adopted, at its 748th meeting on 22 November 2006 (CAT/C/SR.748), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the presentation of the initial report of Guyana, which complies partly with the Committee's guidelines on the form and content for the preparation of initial reports, but nevertheless regrets that it was submitted with a 17-year delay.

(3) The Committee commends the report's frankness and the State party's acknowledgement of shortcomings in the implementation of the Convention. The Committee welcomes the constructive and frank dialogue conducted with the representative of the State party and appreciates the answers provided to the questions raised during the dialogue.

B. Positive aspects

(4) The Committee acknowledges the ongoing efforts of the State party to reform its legal and institutional system. In particular, the Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party of most of the core international human rights treaties;

(b) The ratification by the State party of the Rome Statute of the International Criminal Court, on 24 July 2004;

(c) The recent efforts made to reform and strengthen the national legislative base, including the following legislation:

- Combating of Trafficking in Person Act in 2005, which provides measures to combat trafficking in persons;
- Witness Protection Bill, in May 2006;
- Mutual Cooperation in Criminal Matters Bill, in April 2006;
- Justice Protection Bill, in May 2006.

C. Factors and difficulties impeding the implementation of the Convention

(5) The Committee notes that the State party has for several years been going through a period of economic constraints, social violence and widespread criminality which has had and continues to have an impact on the country. The Committee points out, however, that, as stated in article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern and recommendations

(6) The Committee notes that it is not clear whether all acts of torture are offences under the State party's criminal law (arts. 1 and 4).

> **The State party should take the necessary legislative measures to ensure that all acts of torture are offences under its criminal law in accordance with the definition contained in article 1 of the Convention, and that these offences are punishable by appropriate penalties which take into account their grave nature.**

(7) The Committee is concerned about past irregularities in the approval of firearm licences in Guyana, whereby licences have been allegedly granted indiscriminately and the firearms used to commit offences prohibited by the Convention (art. 2).

> **The State party should strengthen the administrative measures to control the indiscriminate issuance of firearms licences, ensuring that the process of application for firearms is streamlined and that the Firearm Regulations are applied uniformly and amended where necessary.**

(8) The Committee regrets the lack of information on the compliance by the State party with article 3 of the Convention.

> **The Committee would like to remind the State party of the absolute nature of the prohibition on expelling, returning (refouler) or extraditing a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, as established by article 3 of the Convention. The State party should submit in its next periodic report information regarding the implementation of article 3 of the Convention in cases of extradition, expulsion or return (refoulement) of foreigners.**

(9) While taking note of the efforts made by the State party in addressing the issue of the ethnic composition in the Guyana Police Force, the Committee is concerned at the reduced presence of persons of Indo-Guyanese origin in the police force, which would appear to be among the underlying causes of the high number of deaths in custody of persons of Indo-Guyanese origin.

The State party should continue its efforts to *diversify the ethnic composition of the Guyana Police* Force and take appropriate measures to prevent the incidence of deaths in custody.

(10) While taking note of the low number of health personnel in the country, the Committee is concerned at the absence of training for medical officers on their obligations under the Convention, particularly to identify and document cases of torture and to assist in the rehabilitation of victims (art. 10).

The State party should take the necessary steps to ensure that adequate training is provided to the medical personnel in the country regarding their obligations under the Convention and in accordance with the Istanbul Protocol. The State party is encouraged to seek international cooperation and technical assistance to conduct such trainings.

(11) The Committee is concerned about reports on the excessive length of pretrial detention, which, despite existing legislation limiting its duration, can occasionally last between three and four years (art. 11).

The State party should take all necessary measures to guarantee that the mandatory limits established by law are respected in practice in order to ensure that pretrial detention is only used as an exceptional measure for a limited period of time.

(12) The Committee has noted the unacceptable detention conditions prevailing in Guyana, in particular in the Georgetown and Mazaruni prisons. The most widespread problems are overcrowding, poor hygienic and physical conditions, as well as lack of human, material and financial resources.

The State party should take immediate steps to reduce overcrowding in prisons by improving the infrastructure and hygienic conditions and making available the necessary material, human and budgetary resources to ensure that the conditions of detention in the country are in conformity with minimum international standards. The State party is encouraged to seek and/or devote technical assistance for this purpose.

(13) The disciplinary measures used in the treatment of prisoners are a matter of concern for the Committee, in particular section 37 of the Prison Act, 1998, which allows whipping, flogging and reduction of diet (arts. 2 and 11).

While taking note of the statement of the representative of the State party that these disciplinary measures have not been used, the State party should review all legal provisions which authorize these practices with a view to abolishing them as a matter of priority. The State party is reminded that treatment of prisoners should guarantee full respect for the dignity and human rights of all prisoners in conformity with the Standard Minimum Rules for the Treatment of Prisoners.

(14) The Committee is concerned at allegations that children (ages 10-16) are not always separated from adults while on remand and at the dire conditions of detention (art. 11).

The State party should adopt urgent measures to ensure that children (ages 10-16) are always separated from adults while on remand. The State party should also take measures to bring the conditions of detention in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

(15) The Committee is particularly concerned about reports of widespread police brutality, the use of force and firearms by the police, as well as the lack of accountability of the Guyana Police Force. While the Committee welcomes the additional information provided by the representative of the State party with respect to the cases of two members of the police who had been charged and sentenced for abuses, it regrets the absence of data on enquiries, cases and convictions related to abuses by the police (arts. 11 and 12).

The State party should:

(a) Ensure that the circumstances under which police officers are authorized to use force and firearms, are exceptional and clearly defined, and that members of the Guyana Police Force are adequately trained on the appropriate use of force and firearms in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(b) Take effective steps to guarantee the accountability of the Guyana Police Force and, to this effect, carry out prompt, impartial and effective investigations, try the perpetrators of acts of abuse and, when convicted, impose appropriate sentences and adequately compensate the victims.

(16) The Committee is concerned about allegations of extrajudicial killings by the police and the ineffective efforts made by the police in investigating those killings and apprehending the perpetrators (arts. 11 and 12).

The State party is urged to take immediate steps to prevent acts such as the alleged practice of extrajudicial killings by members of the police. The State party should take the necessary measures to guarantee that prompt and impartial inquiries are conducted, perpetrators are prosecuted and effective remedies are provided to victims.

(17) The Committee is concerned at the Constitutional provision that allows the employment of part-time judges could jeopardize their independence and impartiality. The Committee is also concerned about reports that indicate that this provision has been used to deal with the backlog of cases awaiting trial (arts. 12 and 13).

While the Committee takes note of the statement made by the representative of the State party that the Constitutional provision allowing for the use of part-time judges has not been applied, the Committee encourages the State party to amend the Constitution and delete this provision.

(18) The Committee is concerned at the provision in the Criminal Code that establishes the minimum age of criminal responsibility, which is set at 10 years of age (art. 13).

The State party should take the necessary measures to raise the minimum age of criminal responsibility to an internationally acceptable level, as previously recommended by the Committee on the Rights of the Child (CRC/C/15/Add.224).

(19) The Committee is concerned about reports of widespread sexual violence, including in places of detention, and about the extremely low rate of convictions in such cases. The Committee is also concerned about reports of numerous cases of intimidation and threats against victims of sexual violence and of the absence of a witness protection programme.

The State party is urged to take effective and comprehensive measures to combat sexual violence in the country, inter alia (arts. 12 and 13), to:

(a) Establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities;

(b) Ensure that law enforcement personnel are instructed on the absolute prohibition of violence and rape in custody as a form of torture as well as trained to deal with charges of sexual violence;

(c) Carry out prompt, impartial and effective investigations, try the perpetrators of such acts and, when convicted, impose appropriate sentences, and adequately compensate victims;

(d) Ensure that the complainant and witnesses are protected against all ill-treatment and intimidation as a consequence of the complaint or any evidence given;

(e) Establish a monitoring mechanism to investigate and deal with cases of sexual violence in the country.

(20) The Committee is concerned about the reports regarding the high number of cases of domestic violence in the country.

The State party should take urgent measures to reduce cases of domestic violence, including training of police, law enforcement personnel and health personnel, in order to investigate and deal with instances of domestic violence. The State party should make more effective use of the Domestic Violence Act of 1996.

(21) While the Committee expresses satisfaction for the creation of institutions for the promotion and protection of human rights, such as the Human Rights Commission, the Women and Gender Commission, the Indigenous Peoples Commission, the Rights of the Child Commission, it regrets the fact that the necessary appointments to enable these institutions to begin work have not yet been made by Parliament, apparently due to political reasons (art. 13).

The State party is strongly encouraged to take effective steps to expedite appointments to these institutions for the promotion and protection of human rights.

(22) The Committee expresses its concern about the inability of the Office of the Ombudsman to continue functioning as a result of the non-appointment, since January 2005, of an Ombudsman by Parliament apparently due to political reasons (art. 13).

The State party is urged to take the necessary measures to ensure the resumption of the activities of the Office of the Ombudsman and provide it with the human and financial resources in order to allow it to carry out its mandate.

(23) The Committee expresses its concern about the deplorable conditions of detention of those persons held on death row, which could amount to cruel, inhuman or degrading treatment (art. 16).

The State party should take all necessary measures to improve conditions of detention of persons on death row in order to guarantee their basic needs and fundamental rights.

(24) The Committee notes with concern the lack of statistics, especially with regard to cases of torture, in relation to complaints, convictions of perpetrators and compensation provided to victims of torture.

The State party should provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, and on the related investigations, prosecutions and criminal and disciplinary sanctions. Information is further requested on any measures taken to compensate and provide rehabilitation services for the victims.

(25) The Committee encourages the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(26) The State party is encouraged to disseminate widely the reports submitted by Guyana to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(27) The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations contained in paragraphs 12, 16, 19, 20 and 21 above.

(28) The Committee, having concluded that during the consideration of the report of Guyana sufficient information was adduced to cover the 17-year period of delay in submitting the initial as well as the periodic reports, decided to request the second periodic report by 31 December 2008.

34. Hungary

(1) The Committee considered the fourth periodic report of Hungary (CAT/C/55/Add.10) at its 738th and 741st meetings (CAT/C/SR.738 and 741), held on 15 and 16 November 2006, and adopted, at its 748th and 749th meetings (CAT/C/SR.748 and 749), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of Hungary and the information presented therein. The Committee expresses its appreciation for the dialogue with the State party's delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/HUN/Q/4/Add.1), which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and ratified the Rome Statute of the International Criminal Court.

(4) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) Act No. CXXXV of 2005 on the Assistance to be afforded to Victims of Crimes and on the Mitigation of Damages by the State;

(b) Act No. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities;

(c) Act No. XXXIX of 2001 on the Entry and Stay of Foreigners ("the Aliens Act") and Government Decree No. 170/2001 on the implementation of the Aliens Act;

(d) Act No. XIX of 1998 on the Code of Criminal Procedure;

(e) The adoption of the Code of Conduct for Police Interrogations in 2003;

(f) The establishment of a shelter for unaccompanied minors in 2003, in conjunction with the United Nations High Commissioner for Refugees;

(g) The ongoing grant programme for secondary school pupils of Roma origin in disadvantageous situations, supporting them to become police officers; and

(h) The publication in June 2006 of the last report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2006) 20) and the State party's responses to it (CPT/Inf (2006) 21).

(5) The Committee also welcomes the oral assurances given by the State party's representatives that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is envisaged shortly.

C. Principal subjects of concern and recommendations

Definition of torture

(6) Notwithstanding the State party's assertion that, under the Hungarian Criminal Code (section 226 on ill-treatment in official proceedings, section 227 on forced interrogation and section 228 on unlawful detention), all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, the Committee observes that all elements of the definition of torture as provided by article 1 of the Convention are still not included in the Criminal Code of the State party.

> **The State party should adopt a definition of torture that covers all the elements contained in article 1 of the Convention.**

Pretrial detention

(7) The Committee expresses its concern at the length of the initial pretrial detention phase (up to 72 hours), at ongoing pretrial detention on police premises and the high risk of ill-treatment which it entails and greatly regrets that pretrial detention of up to three years is provided for under the Criminal Procedure Act. Furthermore, the Committee is concerned that pretrial detainees under and over 18 years are accommodated in the same cell in the course of the procedure and notes that the need for separation of children and adults is included in the Draft Penitentiary Code (arts. 2, 11 and 16).

> **The State party should take appropriate measures to ensure that its pretrial detention policy meets international standards, including by reducing pretrial detention on police premises, further reducing the period of pretrial detention and using the alternative measures outlined in the Code of Criminal Proceedings under the chapter "Coercive Measures" in cases where the accused does not pose a threat to society. Furthermore, the State party should take the necessary measures to ensure that children in pretrial detention are kept separately from adults, and adopt the Draft Penitentiary Code.**

Fundamental safeguards

(8) The Committee is concerned at allegations that fundamental legal safeguards for persons detained by the police or Border Guard staff, including the rights of access to a lawyer and medical examination, are not being observed in all situations. In this respect, the Committee notes with concern that a high number of persons with an ex officio defence counsel remain without actual assistance from their attorney in the investigation phase of the procedure. Furthermore, the Committee is concerned at information that the compulsory medical examination upon arrival at the police station is often carried out by physicians who are not independent from the police and in the physical presence of police officers, and that the same applies in the case of illegal foreigners in the presence of Border Guard staff (arts. 2, 13 and 16).

> **The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police or Border Guard staff are respected, including the right to inform a relative, have access to a lawyer as well as to an independent medical examination or a doctor of their own choice, and the right to receive information about their rights.**
>
> **The State party should, inter alia, ensure that:**
>
> **(a) Persons in the custody of police or Border Guard staff benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty;**
>
> **(b) Police officers and Border Guard staff are not present during medical examinations of persons under custody in order to guarantee the confidentiality of medical information, save under exceptional and justifiable circumstances (i.e. risk of physical aggression).**

Detention of asylum-seekers and non-citizens

(9) The Committee is concerned at the detention policy applied to asylum-seekers and other non-citizens, including reports that they often face lengthy periods of detention, including in the context of the so-called "alien policing procedure", with detention for up to 12 months in alien policing jails maintained by the Border Guard service (arts. 2, 11 and 16).

> **The State party should take measures to ensure that detention of asylum-seekers and other non-citizens is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time, and that the rules of maximum-severity penitentiaries do not apply to these detention facilities. The State party should also ensure that courts carry out a more effective judicial review of the detention of these groups.**

Non-refoulement

(10) The Committee notes with concern that individuals may not have been able, in all instances, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return or extradition to another country. The Committee is also concerned at information that the right of non-citizens seeking protection to have access to the asylum procedure is not fully guaranteed at the border, and at reports of unlawful expulsions of asylum-seekers and other non-citizens to third countries implemented by the Border Guard service (arts. 3 and 16).

> **The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.**
>
> **In this respect, the State party should ensure that the relevant alien policing authorities carry out a thorough examination in accordance with section 43 (1) of the Aliens Act, prior to making an expulsion order, in all cases of foreign nationals who have entered or stayed in Hungary unlawfully, in order to ensure that the person concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country where he/she would be returned. The State party should expand and update its country of origin (COI) information database and take effective measures to certify that the internal regulation about the obligatory use of the COI system is respected.**

Training

(11) The Committee is concerned at the lack of specific training on the prohibition of torture, inhuman or degrading treatment or punishment provided for law enforcement officials at all levels, including police officers, prison staff, and personnel of the Border Guard and the Office of Immigration and Nationality (OIN). In addition, the Committee regrets that there is no available information on the impact of the training conducted for law enforcement officials and border guards, and how effective the training programmes have been in reducing incidents of torture, violence and ill-treatment (art. 10).

> **The State party should further develop educational programmes to ensure that law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture and ill-treatment, and the Committee recommends that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.**

Data collection

(12) The Committee regrets the fact that for certain areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to, for example, the ethnicity of inmates and detainees, particularly the Roma (art. 11).

> **The State party should take such measures as may be necessary to ensure that its competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention.**

Conditions of detention

(13) The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, there is continuing overcrowding in prisons. The Committee is also concerned at allegations of some cases of ill-treatment by custodial/prison staff, including beatings and verbal abuse (arts. 11 and 16).

> **The State party should continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the wider application and use of alternative sentencing introduced by the new Act on Criminal Proceedings and the establishment of additional prison facilities as needed. The prison management should deliver a clear message to custodial/prison staff that ill-treatment is not acceptable.**

Ill-treatment and excessive use of force

(14) The Committee notes with concern some allegations of excessive use of force and ill-treatment by law enforcement officials, especially in the course of or in relation to apprehension. In this respect, the Committee is particularly concerned at reports emerging of alleged excessive use of force and ill-treatment by the police during the demonstrations in Budapest in September and October 2006 (arts. 12 and 16).

> **The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented at all levels of the police-force hierarchy as well as for all staff in penitentiary establishments. Such a policy should identify and address the problems, and should include the new Code of Conduct for Police Interrogations and introduce a code of conduct for all officials as well as regular monitoring by an independent oversight body. The State party should take measures to ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.**

(15) The Committee is concerned at reports that law enforcement officers did not carry identification badges during the Budapest demonstrations, which made it impossible to identify them in case of a complaint of torture or ill-treatment (art. 13).

> **The State party should ensure that all law enforcement officials be equipped with visible identification badges to ensure the protection against torture, inhuman or degrading treatment or punishment.**

Prompt and impartial investigations

(16) The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated (arts. 12 and 16).

> **The State party should:**
>
> **(a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent**

body. In connection with prima facie cases of torture and ill-treatment, the suspect should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate the de facto impunity for law enforcement personnel who are responsible for violations prohibited by the Convention.

Compensation and rehabilitation

(17) While noting that the Act on Assistance to Victims contains provisions regarding the right to compensation for victims of crimes and supporting services available for such victims, the Committee regrets the lack of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (art. 14).

The State party should strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop a specific programme of assistance in respect of victims of torture and ill-treatment. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

Prisoners placed under a special security regime

(18) The Committee is concerned at the situation of the so-called "Grade 4 prisoners" who may be placed in a maximum security cell or ward with severe restrictions of their rights resulting in extreme isolation and deprivation of human contact. Furthermore, the Committee notes with concern that, according to information before the Committee, neither the Admission Committee of a given penitentiary institution nor the special committee appointed by the national commander issue formal resolutions and that the "Grade 4 prisoners" cannot appeal to any higher-level authorities or any courts (arts. 2, 13 and 16).

The State party should review and refine the system of classifying prisoners as Grade 4 with a view to ensuring that this grade is only applied - and retained - in respect of prisoners who genuinely require to be accorded such a status and review without further delay their current policy with regard to the application of means of restraint to prisoners placed under this system. Furthermore, the State party should establish a proper appeal procedure relating to this special security regime as well as adequate review mechanisms relating to its determination and duration.

The Roma

(19) The Committee is deeply concerned at reports of a disproportionately high number of the Roma in prisons and ill-treatment of and discrimination against the Roma by law enforcement officials, especially the police (arts. 11 and 16).

The State party should intensify its efforts to combat discrimination against and ill-treatment of the Roma by law enforcement officials, especially the police, including through the strict application of relevant legislation and regulations providing for sanctions, adequate training and instructions to be given to law enforcement bodies and the sensitization of the judiciary. Furthermore, the State party should strengthen its support to the grant programme for support of police officers of Roma origin and to the Roma Police Officers Association.

National minorities and non-citizens

(20) The Committee notes with concern reports of ill-treatment of and discrimination against persons belonging to national minorities and non-citizens by law enforcement officials, especially the police (arts. 11 and 16).

> **The State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to national minorities and non-citizens by law enforcement officials.**

Trafficking

(21) The Committee is concerned about persistent reports of trafficking in women and children for sexual and other exploitative purposes. The Committee regrets the lack of information about any assistance provided to victims of trafficking and training of law enforcement personnel and other relevant groups (arts. 2, 10 and 16).

> **The State party should continue to take effective measures to prosecute and punish trafficking in persons, including by strictly applying relevant legislation, raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.**

(22) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims.

(23) The State party is encouraged to disseminate widely the reports submitted by Hungary to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(24) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 9, 12 and 17 above.

(25) The State party is invited to submit its fifth and sixth periodic reports which will be considered as its sixth periodic report by 31 December 2010.

35. **Mexico**

(1) The Committee considered the fourth periodic report of Mexico (CAT/C/55/Add.12) at its 728th and 731st meetings, held on 8 and 9 November 2006 (CAT/C/SR.728 and CAT/C/SR.731), and, at its 747th meeting held on 21 November 2006 (CAT/C/SR.747), adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of Mexico and the constructive and fruitful dialogue with the competent and high-level delegation. The Committee also expresses appreciation to the State party for its detailed responses to the list of issues, and for the additional information presented by the delegation.

B. Positive aspects

(3) The Committee welcomes the State party's completely open attitude to international human rights monitoring mechanisms in recent years, and in particular the submission of the State party's reports to six of the seven human rights treaty bodies in recent months.

(4) The Committee commends the State party on ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 11 April 2005. This introduced into the State party's legal system an additional tool for prevention in efforts to combat torture, and confirmed the State party's resolve to combat and eradicate this practice.

(5) The Committee also commends the State party on the statement it made on 15 March 2002 recognizing the Committee's competence to receive individual complaints relating to cases of torture under article 22 of the Convention.

(6) The Committee appreciates the efforts made by the State party in the field of training relating to the prohibition of torture and the protection of human rights in general, and also the setting-up of human rights protection units in the various sections of the Office of the Attorney-General of the Republic.

(7) The Committee commends the State party on the reform of article 18 of the Constitution, setting up a new system of criminal justice for young people, whose provisions include the promotion of alternatives to custodial sentences.

(8) The Committee commends the State party on the incorporation of the Istanbul Protocol into Mexican law both at the federal level and in several states, and also the establishment of collegiate bodies to monitor the introduction of the special medical and psychological report in relation to possible cases of torture and ensure greater transparency in its use.

(9) The Committee congratulates the National Human Rights Commission on its work in monitoring and reporting human rights violations.

(10) The Committee also welcomes the fact that the State party has become a party to the following treaties:

(a) The Optional Protocol to the International Covenant on Civil and Political Rights, on 15 March 2002;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 15 March 2002;

(c) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 15 March 2002;

(d) The Rome Statute of the International Criminal Court, on 28 October 2005;

(e) The Inter-American Convention on Forced Disappearance of Persons, on 28 February 2002;

(f) Convention 182 (1999) of the International Labour Organization concerning the prohibition and immediate action for the elimination of the worst forms of child labour, on 30 June 2000.

C. Principal subjects of concern and recommendations

(11) The Committee notes that the Federal Act to Prevent and Punish Torture defines torture in accordance with the provisions of the Convention. However, the Committee is concerned that in most cases the definition of the crime of torture differs from one state to another, and that the crime is not mentioned in the Penal Code of the State of Guerrero.

The State party should ensure that both federal and state legislation characterizes the crime of torture in keeping with international and regional standards, including the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture.

(12) The Committee takes note of the proposed reform of the whole system of justice, whose main objectives include the introduction of an accusatory and oral procedure for criminal cases, elimination of the evidentiary value of confessions not made before a judge, and the introduction of the presumption of innocence. However, the Committee is concerned that this reform has not yet been adopted. The Committee is also concerned about reports that in many cases greater evidentiary value is still attached to the first statement made to a prosecutor than to all subsequent statements made to a judge.

The State party should finalize the reform of the whole system of justice in order to, inter alia, introduce an oral accusatory model of criminal proceedings which fully incorporates the presumption of innocence and guarantees the application of the principles of due process in the evaluation of evidence.

(13) The Committee notes with concern the reports it has received about the existence of the practice of arbitrary detention in the State party.

The State party should take the necessary steps to prevent all forms of detention which may be conducive to the practice of torture, investigate allegations of arbitrary detention and punish any persons who have committed an offence.

(14) The Committee notes with concern that cases of torture committed by military personnel against civilians during the performance of their duties continue to be tried in military courts. The Committee is also concerned that, while reforms have been proposed in this area, torture inflicted on military personnel is still not defined as an offence under military law.

The State party should ensure that cases involving violations of human rights, especially torture and cruel, inhuman or degrading treatment, committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related [see also the Committee's recommendation to this effect contained in its report on Mexico in the context of article 20 of the Convention (CAT/C/75, para. 220 (g))). The State party should also reform the Code of Military Justice to include the crime of torture.

(15) The Committee is concerned about the institution of *arraigo penal* (short-term detention), which is reported to have been converted into a form of pretrial detention using units guarded by the judicial police and personnel from the Public Prosecutor's Office, where suspects can be held for 30 days - up to 90 days in some states - while an investigation is being carried out to gather evidence and question witnesses. The Committee notes with satisfaction the federal Supreme Court's decision in September 2005 declaring *arraigo penal* unconstitutional, but it is concerned that the court's decision relates only to the Penal Code of Chihuahua State and would seem not to be binding on courts in other states.

In the light of the federal Supreme Court's decision, the State party should ensure that *arraigo penal* is eliminated both from legislation and in actual practice, at the federal and state levels.

(16) The Committee is concerned at the fact that the authorities classify acts which could be described as acts of torture as less serious offences - a possible explanation of the low number of trials and convictions for torture. The Committee is also concerned that, although a proposed reform in this area is before the Congress, crimes against humanity, including the crime of torture, remain subject to limitation.

The State party should:

(a) Investigate all allegations of torture as such, in a prompt, effective and impartial manner, and ensure that in all cases a medical examination is carried out by an independent doctor in accordance with the Istanbul Protocol (see also the Committee's recommendation to this effect contained in its report on Mexico in the context of article 20 of the Convention (CAT/C/75, para. 220 (k));

(b) Take the necessary steps to provide professional training for medical personnel whose task it is to attend to alleged victims and check their condition, and guarantee the independence of such personnel and extend the implementation of the Istanbul Protocol to all states (see paragraph 8 above);

(c) Ensure that if acts of torture are evidenced by independent medical examinations carried out in accordance with the Istanbul Protocol, these examinations are considered to be unchallengeable in court;

(d) Try and punish persons responsible for acts of torture in a manner consistent with the seriousness of the acts committed;

(e) Finalize the penal reform so as to ensure that crimes against humanity, and in particular torture, are not subject to limitations.

(17) The Committee takes note of the concern recently expressed by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families as regards article 33 of the Constitution, which grants the executive branch exclusive powers to expel any foreigner whose stay is deemed inappropriate from the national territory immediately and without need for a prior court decision. The Committee is concerned at the failure to grant full access to judicial remedies whereby each case can be properly reviewed.

In the light of article 3 of the Convention, the State party should take all necessary steps to ensure that interested parties have access to judicial remedies enabling them to challenge the expulsion decision, and that such remedies have the effect of staying the decision.

(18) The Committee notes with concern reports of the excessive use of force by the police during the events and disturbances in Guadalajara (Jalisco) on 28 May 2004, and in San Salvador Atenco (Atenco) on 3 and 4 May 2006. The Committee is concerned at reports that during those operations there was indiscriminate use of arbitrary detention and incommunicado detention, and also ill-treatment and all kinds of abuse. The Committee has also heard allegations of this type relating to recent incidents in Oaxaca.

The State party should:

(a) Ensure that force will be used only as a last resort and in strict conformity with the international rules of proportionality and necessity in the light of the existing threat;

(b) Implement recommendation No. 12 concerning "the unlawful use of force and firearms by officials or public servants responsible for law enforcement" proposed by the National Human Rights Commission in January 2006;

(c) Investigate all allegations of human rights violations by public officials, especially those suffered by persons arrested during these police operations, and try and properly punish those responsible.

(19) The Committee is concerned about reports of violence suffered by women in particular during the police operation carried out in May 2006 in San Salvador Atenco, and especially the alleged cases of torture, including rape, as well as other forms of sexual violence such as molestation and threats of rape, ill-treatment, and other abuses committed by members of the security forces and other law enforcement officials. In this regard, the Committee notes with satisfaction the creation, in February 2006, of a post of Special Prosecutor to handle offences involving acts of violence against women, whereby a gender perspective is introduced into the investigation of serious human rights violations. However, the Committee is concerned that the activities of the Special Prosecutor may be limited to ordinary offences under federal law.

The State party should:

(a) Conduct a prompt, effective and impartial investigation into the incidents which occurred during the security operation in San Salvador Atenco on 3 and 4 May 2006, and ensure that those responsible for the violations are tried and properly punished;

(b) Ensure that the victims of the acts complained of secure fair and effective compensation;

(c) Ensure that all women who have been subjected to sexual violence have access to appropriate services offering physical and psychological rehabilitation and social reintegration;

(d) Establish transparent criteria to make it possible to determine clearly, in the event of jurisdictional disputes between judicial authorities, cases where the Special Prosecutor responsible for handling offences involving acts of violence against women can exercise jurisdiction in respect of specific offences against women.

(20) The Committee takes note of the efforts made by the State party to address the cases of violence against women in Ciudad Juárez, including the establishment in 2004 of the post of Special Prosecutor to handle offences involving the murder of women in the municipality, and also the Commission to Prevent and Eradicate Violence against Women in Ciudad Juárez. However, the Committee is concerned that many of the cases in which over 400 women in Ciudad Juárez have been murdered or have disappeared since 1993 remain unsolved and that acts of violence, and even murders, continue to occur in Ciudad Juárez. The Committee is also concerned at reports of a failure to draw conclusions as to responsibility from the fact that over 170 state officials are alleged to have committed disciplinary and/or criminal offences during the investigation of these cases, including the use of torture to extract confessions.

The State party should:

(a) Step up its efforts to find and properly punish the persons responsible for these crimes;

(b) Investigate and properly punish public servants who are reported for using methods of torture in order to obtain evidence;

(c) Step up its efforts to fully comply with the recommendations made by the Committee on the Elimination of Discrimination against Women following its inquiry undertaken under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(21) The Committee is concerned at reports that, up to the present, in only two cases has compensation been granted to victims of acts of torture following a judicial procedure.

In accordance with article 14 of the Convention against Torture, the State party should guarantee to every victim of an act of torture, both in legislation and in practice, redress and the right to fair and adequate compensation, including the means for as full a rehabilitation as possible.

(22) The Committee is concerned about reports that, despite legal provisions to the contrary, the judicial authorities continue to accord evidentiary value to confessions obtained using physical or psychological violence, if they are corroborated by other evidence.

The State party should ensure that any statement which is established to have been obtained as a result of torture shall not be invoked, either directly or indirectly, as evidence in any proceeding, in accordance with article 15 of the Convention, except against a person accused of torture as evidence that the statement has been made.

(23) The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee recommends to the State party that it should take all appropriate steps to implement these recommendations, including forwarding them to the members of the Government and Congress, and also to local authorities, for consideration and adoption of the necessary measures.

(24) The Committee recommends that the State party should widely disseminate the reports it submits to the Committee, together with these conclusions and recommendations, inter alia in the indigenous languages, through the media, official websites and non-governmental organizations.

(25) The Committee requests the State party to inform it within one year of steps taken in pursuance of the recommendations contained in paragraphs 14, 16, 19 and 20 of the present concluding observations.

(26) The State party is invited to submit its fifth and sixth reports, which will be considered as the sixth periodic report, by 31 December 2010 at the latest.

36. Russian Federation

(1) The Committee against Torture considered the fourth periodic report of the Russian Federation (CAT/C/55/Add.11) at its 732nd, 733rd and 735th meetings, held on 10 and 13 November 2006 (CAT/C/SR.732, 733 and 735), and adopted, at its 751st meeting on 23 November 2006 (CAT/C/SR.751), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the fourth periodic report of the Russian Federation and the lengthy written responses it provided to the list of issues (CAT/C/RUS/Q/4/Add.1). While the Committee welcomes the dialogue held with the delegation, it regrets the absence of a representative from the General Prosecutor's Office. It appreciates the additional oral and written information provided by the representatives of the State party.

B. Positive aspects

(3) The Committee welcomes the following positive developments:

(a) The entry into force between 1 July 2002 and 1 January 2004 of the new Code of Criminal Procedure adopted in December 2001, which, inter alia, introduces jury trials, stricter limits on detention and interrogation, provisions for exclusion of evidence obtained in absence of a defence lawyer, and authorizes a judge rather than a procurator to order an arrest, as well as limiting to 48 hours the time a criminal suspect can be held in detention;

(b) Entry into force on 1 July 2002 of the new Code of Administrative Offences, under which decisions and acts or omissions that degrade human dignity which occur while applying measures of administrative coercion are inadmissible;

(c) The adoption on 25 August 2003 of Decision No. 523, approving a new federal programme that provides for staffing in parts of the armed forces by contract, thus reducing the number of conscripts;

(d) The adoption in August 2004 of the federal law on the state of protection of victims, witnesses and other participants in criminal proceedings, which provides for a system of government protection for crime victims, witnesses and other people involved in criminal proceedings and their relatives;

(e) The ratification in 2004 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(4) The Committee further welcomes the numerous administrative and other measures taken, including in consultation with the Council of Europe, to upgrade the conditions of detention and the State party's commitment to continuing these efforts, and notes in particular:

(a) The Order No. 205 of 2 August 2005 of the Ministry of Justice establishing minimum food rations for suspects, accused and convicted persons;

(b) The substantial measures taken by the State party to reduce overcrowding in places of detention and the adoption in September 2006 of the Strategic framework for the development of the penitentiary system.

C. Subjects of concern and recommendations

(5) The Committee's concerns and recommendations are presented below in paragraphs 7 to 23 and address matters throughout the territory of the State party; paragraph 24 specifically addresses the situation in the Chechen Republic, as in the Committee's previous recommendations.

(6) The Committee is concerned about the areas set out below.

Definition

(7) While noting the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable in the Russian Federation, the definition of the term "torture" as contained in the annotation to article 117 of the Criminal Code does not fully reflect all elements of the definition in article 1 of the Convention which includes the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. The definition, moreover, does not address acts aimed at coercing a third person as torture.

> **The State party should take measures to bring its definition of torture into full conformity with article 1 of the Convention, in particular to ensure that police, army, as well as prosecutorial officials, can be prosecuted under article 302 as well as under article 117 of the Criminal Code.**

Safeguards for detainees

(8) Laws and practices that obstruct access to lawyers and relatives of suspects and accused persons, thus providing insufficient safeguards for detainees, include:

(a) Internal regulations of temporary facilities i.e. IVS (temporary police detention) and SIZOs (pretrial establishments), failure of the courts to order investigations into allegations that evidence has been obtained through torture, as well as reported reprisals against defence lawyers alleging that their client has been tortured or otherwise ill-treated, and which appear to facilitate torture and ill-treatment;

(b) The possibility of restricting access to relatives of suspects in the interest of the secrecy of the investigations provided for in article 96 of the Code of Criminal Procedure;

(c) The Law on Operative-Search Activity, as well as the federal Law No. 18-FZ of 22 April 2004, amending article 99 of the Code of Criminal Procedure, according to which suspects of "terrorism" may be detained for up to 30 days without being charged;

(d) The reported practice of detention of criminal suspects on administrative charges, under which detainees are deprived of procedural guarantees.

> **The State party should ensure the implementation in practice of the right to access a lawyer and other guarantees of protection from torture starting from the moment of actual deprivation of liberty at the request of the detainee and not solely at the request of a public official.**
>
> **The State party should ensure that criminal suspects are afforded their rights and procedural guarantees so that they are not arbitrarily detained on administrative charges.**

Widespread use of torture

(9) The Committee is concerned at:

(a) The particularly numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel, including in police custody;

(b) The law enforcement promotion system based on the number of crimes solved, which appears to create conditions that promote the use of torture and ill-treatment with a view to obtaining confessions;

(c) The information of the State party that representatives of international organizations other than the European Committee for the Prevention of Torture can talk to prisoners only when accompanied by representatives of the administration.

The State party should ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those found responsible, as well as the protection of complainants and witnesses of torture.

The State party should consider setting up a national system to review all places of detention and cases of alleged abuses of persons while in custody, ensuring regular, independent, unannounced and unrestricted visits to all places of detention. To that end, the State party should establish transparent administrative guidelines and criteria for access, and facilitate visits by independent monitors, such as independent non-governmental organizations.

The State party should finalize and adopt the draft federal Law No. 11807-3, which was adopted by the State Duma on first reading in September 2003 and is now in preparation for a second reading.

The State party should take appropriate measures to eliminate any adverse effect that the current law enforcement promotion system may have on the prevalent use of torture and ill-treatment.

(10) The Committee is further concerned at:

(a) Continuing reports of hazing[3] in the military (*dedovshchina*) as well as of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent, acquiescence or approval of officers or other personnel, notwithstanding the State party's reported intention to develop an action plan to prevent hazing in the armed forces;

(b) Documented reports that victims who lodge complaints are subjected to further reprisals and abuse and that there is no system of protection for witnesses of such acts;

(c) Hundreds of reports that investigations are inadequate or absent, and that despite thousands of officers charged with such offences, that there is widespread impunity.

The State party should apply a zero-tolerance approach to the continuing problem of *dedovshchina* in the armed forces, take immediate measures of prevention and ensure prompt, impartial and effective investigation and prosecution of such abuses.

The State party should ensure the protection of victims and witnesses of violence in the armed forces and establish a rehabilitation programme, including appropriate medical and psychological assistance, for victims.

Violence against women and children, including trafficking

(11) The Committee is concerned at:

(a) The lack of formal complaints, according to the State party, despite reliable allegations of violence against women in custody;

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[3] The *Concise Oxford English Dictionary* (Eleventh edition) defines the verb "to haze" as follows: [N. Amer.] "torment or harass (a new student or recruit) by subjection to strenuous, humiliating, or dangerous tasks".

(b) Reports of prevalent domestic violence and the lack of sufficient shelters for victims;

(c) Continued reports of trafficking in women and children for sexual exploitation.

The State party should ensure the protection of women in places of detention, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight.

The State party should ensure protection of women by adopting specific legislative and other measures to address domestic violence, providing for protection of victims, access to medical, social and legal services and temporary accommodation and for perpetrators to be held accountable.

The State party should strengthen measures to prevent and combat the sexual exploitation and abuse of children.

The State party should continue its efforts to ensure effective implementation of anti-trafficking legislation. The State party should adopt the proposed legislative amendments as well as the draft act "On Counteracting the Trafficking of People" to ensure more effective protection of victims and the prosecution of traffickers.

Investigations and impunity

(12) The insufficient level of independence of the Procuracy, in particular due to the problems posed by the dual responsibility of the Procuracy for prosecution and oversight of the proper conduct of investigations, and the failure to initiate and conduct prompt, impartial and effective investigations into allegations of torture or ill-treatment.

As a matter of priority, the State party should pursue efforts to reform the Procuracy, in particular by amending the current federal Law on the Prosecutor's Office to ensure its independence and impartiality as well as to separate the function of criminal prosecution from the function of supervision of preliminary investigations into allegations of torture. The State party should establish effective and independent oversight mechanisms to ensure prompt, impartial and effective investigations into all reported allegations, and legal prosecution or punishment of those found guilty.

Independence of the judiciary

(13) The Committee is concerned about:

(a) The system of tenure of judges and its impact on the independence of the judiciary;

(b) The system of election of jurors, which does not automatically exclude from jury duty heads of legislative or executive bodies, army servicemen, judges, prosecutors and officers of law enforcement bodies.

The State party should reform the system of selection of jurors to ensure that the participation of such persons in juries is banned and to exclude any possibility for arbitrary selection, which could undermine their neutrality and impartiality. The State party should continue its efforts to strengthen the independence of the judiciary, in particular in relation to the security of tenure of judges.

Juvenile justice system

(14) While noting several legislative initiatives in progress, the Committee is concerned that the State party has not established a juvenile justice system.

The State party should pursue the reforms of the juvenile justice system and adopt the draft federal law "On the foundations of a juvenile system", which, inter alia, provides for the creation of juvenile courts.

Asylum, non-refoulement and extradition

(15) Matters related to article 3 of the Convention, including:

(a) Reports of more than 300 people returned this year to other neighbouring countries, according to the Ministry of Internal Affairs, and the lack of safeguards to ensure respect for the obligation of non-refoulement under article 3 of the Convention;

(b) The widespread and broad use of administrative expulsion according to article c18.8 of the Code of Administrative Offences for minor violations of immigration rules.

> **The State party should ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.**
>
> **The State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly. The State party should ensure compliance with the requirements of article 3 of the Convention for an independent, impartial and effective administrative or judicial review of the decision to expel.**
>
> **The State party should issue identity documents to all asylum-seekers at the outset of the asylum process, including at Sheremetyevo 2 airport.**

(16) The reported use of written assurances in the "refoulement" context, in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention.

> **The State party should provide the Committee with detailed statistical information on the number of assurances sought for the period since 2002, the persons concerned and the outcome of each case, as well as on minimum contents for any assurances. The State party should moreover establish and implement clear procedures for obtaining such assurances, adequate judicial mechanisms for review, as well as effective post-return monitoring mechanisms.**

Detention and places of deprivation of liberty

(17) While noting the significant efforts undertaken by the State party (see paragraph 4), the Committee remains concerned at:

(a) Conditions in detention facilities and the continuing problem of overcrowded penal institutions and juvenile institutions;

(b) The failure of the new Criminal Procedure Code (2001) to impose mandatory limits on pretrial detention during judicial proceedings;

(c) The situation of inadequate health care provided to persons in pretrial detention centres and prison colonies.

> **The Committee encourages the State party to implement the Strategic framework for the development of the penitentiary system, which was adopted in September 2006, and to continue its efforts to address the problem of overcrowding in penal institutions and to improve conditions in prisons, including juvenile detention centres and pretrial detention facilities, to ensure their conformity with the requirements of the Convention.**
>
> **The State party should establish mandatory limits on pretrial detention during judicial proceedings.**

> **The State party should consider the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, alone or together with an appropriate independent body with forensic expertise, so that serious medical cases, particularly deaths in custody, are examined by impartial experts and results are made available to relatives of the deceased.**

(18) While noting the efforts undertaken by the State party to improve the situation, there continue to be inadequate living conditions in psychiatric hospitals for patients, including children, and there is also overcrowding in such institutions, which may be tantamount to inhuman or degrading treatment, as well as lengthy periods of confinement.

> **The State party should further develop outpatient services to reduce the problem of overcrowded psychiatric hospitals and reduce the time of hospitalization as well as take appropriate measures to improve the living conditions in inpatient institutions, for all patients, including children.**

Training

(19) The Committee is concerned at:

(a) The absence of training to detect signs of torture and ill-treatment for medical personnel in general and for personnel at temporary police detention facilities, in particular;

(b) The insufficient level of practical training regarding the obligations under the Convention for law enforcement personnel, judges as well as the military.

> **The State party should ensure practical training for doctors to detect signs of torture and ill-treatment of persons in accordance with the Istanbul Protocol, as well as for prosecutorial and military personnel in relation to the State party's obligations under the Convention.**
>
> **The State party should further expand existing training programmes, including with non-governmental organizations, in the sphere of training of law enforcement and penitentiary personnel.**

Compensation and rehabilitation of victims of torture

(20) The lack of adequate compensation of victims of torture, as recognized by the Constitutional Court, as well as the absence of appropriate measures for rehabilitation of victims of torture and other cruel, inhuman or degrading treatment.

> **The State party should revise the current procedure of compensation, to bring it in line with constitutional requirements and obligations under article 14 of the Convention, ensuring that appropriate compensation is provided to victims of torture. The State party should ensure that appropriate medical and psychological assistance is also provided to victims of torture and ill-treatment.**

Use of evidence obtained through torture

(21) While the Code of Criminal Procedure states that evidence obtained by torture shall be inadmissible, in practice there appear to be no instruction to the courts to rule that the evidence is inadmissible, or to order an immediate, impartial and effective investigation.

> **The State party should adopt clear legal provisions prescribing the measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment, in order to ensure in practice the absolute respect for the principle of inadmissibility of evidence obtained through torture, except against a person accused of torture, as required by article 15 of the Convention.**

Violent attacks on human rights defenders

(22) The Committee is concerned at:

(a) Reliable reports of harassment and killing of journalists and human rights defenders, including the recent murder of Anna Politkovskaya, who, according to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, was preparing a report on serious allegations of torture by officials in the Chechen Republic;

(b) The entry into force on 17 April 2006 of the new law governing the activities of non-commercial organizations, which expands the State's discretion to interfere in and severely hamper the activities of non-governmental organizations.

> **The State party should take effective steps to ensure that all persons monitoring and reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences they might suffer as a result of making such a report, and ensure the prompt, impartial and effective investigation and punishment of such acts.**
>
> **The State party should ensure that the applicability of the new law is clearly defined and that the State's discretion to interfere in NGO activities is limited, and therefore, amend legislation governing the activities of non-governmental organizations to ensure its actual conformity with international human rights standards on the protection of human rights defenders, including the United Nations Declaration on Human Rights Defenders,[4] as well as with best practices internationally.**

Violent attacks because of race, ethnicity or identity of the victim

(23) The reported rise in violent attacks because of the race, ethnicity or identity of the victim, including forced evictions in the Kaliningrad area, and the alleged absence of effective investigations into such crimes.

> **The State party should ensure that all officials are instructed that racist or discriminatory attitudes will not be permitted or tolerated and that any official who is complicit in such attacks will be prosecuted and suspended from his/her post pending resolution of the case or, if there is a danger of recurrence, transferred to a post which does not enable him/her to come into direct contact with potential victims. The State party should ensure prompt, impartial and effective investigations into all such acts of violence.**

The situation in the Chechen Republic

(24) The Committee is concerned at:

(a) Reliable reports of unofficial places of detention in the North Caucasus and the allegations that those detained in such facilities face torture or cruel, inhuman or degrading treatment;

(b) Numerous, ongoing and consistent allegations that abductions and enforced disappearances in the Chechen Republic, in particular during anti-terrorist operations, are inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities and the failure to investigate and punish the perpetrators;

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[4] Full title: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

(c) The dual system of jurisdiction in the Chechen Republic involving both military and civilian prosecutors and courts;

(d) Allegations of torture in the temporary holding facility within the Second Operational Investigative Bureau (ORB-2) of the North Caucasian Operative Administration of the Central Administrative Board of the Ministry of Internal Affairs in the Southern Federal District, as well as in several sub-offices of ORB-2 in the Chechen Republic;

(e) The federal law "On counteracting terrorism" signed on 6 March 2006 fails to explicitly outline the applicability of the safeguards for detainees in the Code of Criminal Procedure to counter-terrorist operations;

(f) Allegations of widespread practice of detaining relatives of suspects of terrorism;

(g) The reported practice of detention of persons for non-compliance with the requirements of the system for registration of residence.

The State party should ensure that no one is detained in any unofficial place of detention under its de facto effective control. The State party should investigate and disclose the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated. The State party should publicly condemn any resort to secret detention and prosecute anyone engaged in or complicit in this practice.

The State party should take all necessary measures to prohibit and prevent abductions and enforced disappearances in any territory under its jurisdiction, and prosecute and punish the perpetrators.

The State party should ensure effective use of joint investigative groups including representatives of both military and civil (territorial) Office of the Public Prosecutor until such time as the competence and jurisdiction of any case can be determined and ensure the right to fair trial to all suspects.

The State party should conduct a thorough and independent inquiry into the methods used in holding facilities in ORB-2 when questioning prisoners.

The State party should conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment in these and other facilities, including examination of medical reports supplied to court cases documenting mistreatment, and ensure that persons responsible are subject to prosecution with appropriate sanctions.

Reiterating its previous recommendation, the State party should clarify the applicable legal regime that currently prevails in the Chechen Republic, as there is no state of exception and there is also a non-international armed conflict in progress. Such clarification could provide individuals with an effective means of seeking redress for any violations committed, so that they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility.

The State party should ensure that any counter-terrorism measures taken with regard to the Chechen Republic and any other territory under its jurisdiction, remain in full conformity with the Convention's prohibitions against torture and ill-treatment.

The State party should establish safeguards against reprisals in order to protect all complainants, including, inter alia, those who submit cases on torture or disappearances to the European Court of Human Rights or under article 22 of the Convention.

(25) The Committee appreciates the data submitted by the representatives of the State party regarding hazing (*dedovshchina*) in the armed forces as well as on the application of articles 117 and 302 of the Criminal Code, but regrets the absence of comprehensive official statistics on investigations of complaints about torture in police

custody and penal institutions in the territory under the State party's jurisdiction. The State party should provide to the Committee detailed statistical data, disaggregated by crimes and sex, and with a breakdown by region, on complaints alleging torture and ill-treatment by law enforcement officials and prison officers and on any related investigations and prosecutions, as well as penal and disciplinary measures. The Committee also requests statistical information on the number of cases, if any, where courts rejected prosecutorial requests for pretrial detention because law enforcement bodies violated legal procedures relating to custody.

(26) The Committee encourages the State party to continue to permit international inspection of places of detention, including by the European Committee for the Prevention of Torture (CPT) and, recalling that representatives of the State party referred repeatedly to recent findings by the individual members of the CPT on the Chechen Republic, recommends that the State party authorize the publication of the CPT's reports on the Chechen Republic and other areas.

(27) The Committee regrets that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment could not yet conduct a visit to the North Caucasus Republics of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria and urges the State party to permit this visit, in full conformity with the Terms of Reference for fact-finding missions by special procedures of the United Nations. The Committee also encourages the State party to ratify the Optional Protocol to the Convention against Torture.

(28) The State party should widely disseminate its report, and its reply to the list of issues, and the summary records, conclusions and recommendations of the Committee, in all appropriate languages through official websites and the media.

(29) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 10, 12, 16, 22, 23 and 24 above.

(30) The State party is invited to submit its fifth periodic report by 31 December 2010.

37. South Africa

(1) The Committee against Torture ("the Committee") considered the initial report of South Africa (CAT/C/52/Add.3) at its 736th and 739th meetings (CAT/C/SR.736 and 739), held on 14 and 15 November 2006, and adopted, at its 750th meeting, on 23 November 2006 (CAT/C/SR.750) the following conclusions and recommendations.

A. Introduction

(2) The Committee takes this opportunity to express its profound satisfaction for the termination of the apartheid regime, which brought so much suffering to the South African people, as well as for the measures taken to ensure that no such regime, based on systematic grave human rights violations, especially torture and cruel, inhuman or degrading treatment, could ever come to being again.

(3) The Committee welcomes the initial report of South Africa, as well as the opportunity to initiate a constructive dialogue with the representatives of the State party. It regrets, however, that the report, due in January 2000, was submitted in June 2005. It also notes that the report does not fully conform to the Committee's guidelines for preparation of initial reports and limits itself mainly to statutory provisions rather than analysing the implementation of the Convention's provisions. However, through the dialogue with the State party's delegation, the Committee was able to obtain information on how the Convention's provisions are applied in practice in the State party.

(4) The Committee commends the State party's delegation for the detailed responses provided both in writing and orally to the questions posed by the members during the examination of the report. The Committee expresses its appreciation for the large and high-level delegation, comprising representatives from several departments of the State party, which facilitated a constructive oral exchange during the consideration of the report.

B. Positive aspects

(5) The Committee commends the State party for the peaceful transition from the apartheid regime and the establishment of a democratic South African society as well as for the adoption of the Constitution of 1996, which includes a Bill of Rights enshrining, inter alia, the rights "to be free from all forms of violence from either public or private sources", "not to be tortured in any way" and "not to be treated or punished in a cruel, inhuman or degrading way", and sets legal safeguards for detained persons.

(6) The Committee acknowledges with appreciation the wide ratification of international human rights instruments by the State party since the end of apartheid, in particular: the International Covenant on Civil and Political Rights, and its Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Rome Statute of the International Criminal Court; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention relating to the Status of Refugees, and its Protocol; and the Convention against Transnational Organized Crime.

(7) The Committee welcomes the adoption of numerous legislative measures designed to entrench, promote and enforce human rights, including the abolition of the death penalty and solitary confinement, the adoption of the Standard Minimum Rules for the Treatment of Prisoners and, especially, the enactment of: (a) the Correctional Services Act of 1998, prescribing the Code of Ethics and Conduct for Correctional Officials; (b) the Refugees Act of 1998; (c) the Domestic Violence Act of 1998; (d) the Immigration Act of 2002; and (e) the Prison Act of 2004.

(8) The Committee also welcomes the establishment of the Law Reform Commission, the South African Human Rights Commission, the Independent Complaints Directorate, with specific investigation powers regarding allegations of torture and the appointment, under the Correctional Services Act, of Independent Prisons Visitors, who report to the Judicial Inspectorate of Prisons.

(9) The Committee notes with satisfaction the State party's assurances that more financial and human resources have been allocated to the Independent Complaints Directorate, that its independence is guaranteed, and that an amendment to its structure is being considered to reinforce and broaden its powers.

(10) The Committee also acknowledges with satisfaction the establishment of a Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service, and the issuing of Standing Orders for the Police.

C. Factors and difficulties impeding the implementation of the Convention

(11) The Committee recognizes that the heritage of the apartheid regime, in which torture and cruel, inhuman or degrading treatment, including arbitrary detention, enforced disappearances and other grave human rights violations, were widespread and institutionalized, continues to have some impact on the State party's criminal justice system and presents obstacles impeding the full implementation of the Convention.

(12) Beyond the dismantling of the former apartheid structures, the Committee acknowledges that the establishment of a justice system respectful of human rights in general, and of the provisions of the Convention in particular, represents a challenge for South Africa and it encourages the State party to strengthen this reform. The Committee points out, however, that, as stated in article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Principal subjects of concern and recommendations

(13) Notwithstanding the provisions of the Constitution and the fact that courts may consider torture as an aggravating circumstance, the Committee is concerned with regard to the absence of a specific offence of torture, as well as of a definition of torture, in the State party's criminal law, more than seven years after the Convention entered into force (arts. 1 and 4).

> **The State party should enact legislation with a specific offence of torture under its criminal law, with a definition fully consistent with article 1 of the Convention, which should include appropriate penalties that take into account the grave nature of the offence, in order to fulfil its obligations under the Convention to prevent and eliminate torture and combat impunity.**

(14) Notwithstanding the provisions of the Constitution, the Committee regrets the absence of clear legal provisions in the State party's domestic legislation ensuring that the absolute prohibition against torture is not derogated from under any circumstances (arts. 2 and 15).

> **The State party should adopt appropriate legislation implementing the principle of absolute prohibition of torture, prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture.**

(15) While acknowledging the jurisprudence of the Constitutional Court on this matter (*Mohamed and Another v. President of the Republic of South Africa and Others*, of 2001, and *S v. Makwanyane*, of 1995), the Committee is concerned by the return of persons by the State party to States where there are substantial grounds for believing that they would be in danger of being subjected to torture or sentenced to death (art. 3).

> **Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that this person would be in danger of being subjected to torture. When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and ensure effective post-return monitoring arrangements.**
>
> **The State party should provide detailed information to the Committee on all cases of extradition, return or removal that are subject to receipt of assurances or guarantees and that have occurred since the entry into force of the Convention; what the minimum contents for such assurances or guarantees are; and what measures of subsequent monitoring it has undertaken in such cases. The State party should also provide the Committee with updated information regarding the cases of Mr. Rashid and Mr. Mohamed.**

(16) The Committee is concerned with the difficulties affecting documented and undocumented non-citizens detained under the immigration law and awaiting deportation in repatriation centres, who are unable to contest the validity of their detention or claim asylum or refugee status and without access to legal aid. The Committee is also concerned about allegations of ill-treatment, harassment and extortion of non-citizens by law enforcement personnel as well as with the absence of an oversight mechanism for those centres and with the lack of investigation of those allegations (arts. 2, 13 and 16).

> **The State party should take all necessary measures to prevent and combat ill-treatment of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre, provide non-citizens with adequate information about their rights and the legal remedies available against any violation of these rights and continue to accelerate its measures to reduce the backlog of asylum applications. Prompt, thorough and independent investigation of all allegations of ill-treatment of non-citizens should also be ensured and an effective monitoring mechanism should be established for those centres.**

(17) The existence of the necessary legislative measures establishing the State party's jurisdiction over acts of torture in accordance with the provisions of the Convention remains unclear for the Committee (arts. 5, 6, 7 and 8).

> **The State party should take the necessary measures to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.**

(18) While noting with appreciation the remarkable work of the Truth and Reconciliation Commission and its role in the peaceful transition in the State party, the Committee notes that de facto impunity persists regarding persons responsible for acts of torture during apartheid and that compensation has not yet been given to all the victims (arts. 12, 2 and 14).

> **The State party should consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid and grant adequate compensation to all victims. The State party should also consider other methods of accountability for acts of torture committed under the apartheid regime, and thus combat impunity.**

(19) The Committee is concerned about the wide discretionary powers available to the National Prosecuting Authority with regard to criminal justice (art. 12).

> **The State party should take all appropriate measures to ensure that its criminal justice system effectively guarantees that everyone is entitled to a fair trial.**

(20) The Committee is concerned at the high number of deaths in detention and with the fact that this number has been rising. The Committee is also concerned at the lack of investigation of alleged ill-treatment of detainees and with the apparent impunity of law enforcement personnel (art. 12).

> **The State party should promptly, thoroughly and impartially investigate all deaths in detention and all allegations of acts of torture or cruel, inhuman or degrading treatment committed by law enforcement personnel and bring the perpetrators to justice, in order to fulfil its obligations under article 12 of the Convention.**

(21) Noting the existence of legal-aid mechanisms, the Committee is concerned about the difficulties vulnerable persons or groups experience in efforts to exercise their right to complain, including for linguistic reasons, to obtain redress and fair and adequate compensation as victims of acts of torture. It is further concerned at the lack of awareness of the Convention's provisions by vulnerable groups (arts. 13 and 10).

> **The State party should take the necessary measures to strengthen legal-aid mechanisms for vulnerable persons or groups, ensuring that all victims of acts of torture may exercise their rights under the Convention and disseminate the Convention in all appropriate languages, in particular to groups made vulnerable.**

(22) While recognizing some improvement of the situation in the State party's detention system, the Committee remains concerned about the overcrowding in prisons and other detention facilities as well as with the high rate of HIV/AIDS and tuberculosis amongst detainees. The overcrowding affects, inter alia, detainees on remand and children, and the Committee is particularly concerned about detention conditions of pretrial detainees placed in police cells, which are inappropriate for long periods of detention, and which place detainees in a situation of great vulnerability. The Committee also expresses its concern that there is no effective oversight mechanism established to monitor the conditions for persons placed in police custody and that time spent in pretrial detention is not taken into account for the calculation of the final sentence (arts. 16 and 11).

> **The State party should adopt effective measures to improve the conditions in detention facilities, reduce the current overcrowding and meet the fundamental needs of all those deprived of their liberty, in particular regarding health care; periodic examinations of prisoners should be carried out. The State party should also ensure that detained children are kept in facilities separate from those for adults in conformity with international standards, reconsider the systematic pretrial detention for certain crimes, especially for children, and establish an effective monitoring mechanism for persons in police custody.**

(23) The Committee is concerned about widespread acts of violence against women and children, especially rapes and domestic violence, and with the lack of an effective State policy to prevent and combat such violence (arts. 16 and 1).

The State party should adopt all necessary measures to prevent, combat and punish violence against women and children and reinforce its cooperation with civil society organizations in combating such violence. The State party should also undertake research into the root causes of the high incidence of rape and sexual violence so that effective preventive measures can be developed; establish awareness-raising campaigns; investigate thoroughly those grave human rights violations; and work towards a "no tolerance" policy.

(24) The Committee is concerned with human trafficking in the State party and notes the lack of effective specific measures to combat such a phenomenon, including the absence of national legislation criminalizing human trafficking (art. 16).

The State party should adopt legislation and other effective measures, in order to adequately prevent, combat and punish human trafficking, especially that of women and children.

(25) While noting that the State party's legislation, as well as the jurisprudence of the Constitutional Court (*S v. Williams and Others*, of 1995), prohibits corporal punishment, the Committee remains concerned at even its infrequent use in some schools and other public institutions and at the absence of an oversight mechanism to monitor these institutions (art. 16).

The State party should ensure that legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children, and establish a monitoring mechanism for such facilities.

(26) While the Committee expresses its satisfaction that the State party has recognized the competence of the Committee to consider communications from or on behalf of individuals claiming to be victims of a violation by the State party of the provisions of the Convention, it notes the absence of communications received (arts. 22 and 10).

The State party should widely disseminate the Convention and information about it, in all appropriate languages, including the mechanism established under its article 22.

(27) The Committee requests the State party to provide in its next periodic report detailed disaggregated statistical data on complaints related to acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials as well as of the investigations, prosecutions and convictions relating to such acts, including with regard to the abuses reportedly committed by South African peacekeepers. It further requests the State party to provide detailed information on compensation and rehabilitation provided to the victims.

(28) The Committee also requests detailed information on the bills criminalizing torture and on child justice and on any other bills or laws related to the implementation of the Convention. It further requests information on the existing training programmes for law enforcement officials and on monitoring mechanisms in mental health and other welfare institutions as well as on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.

(29) The Committee requests the State party to provide, within one year, information on its response to the recommendations in paragraphs 15, 16, 21, 23, 27 and 28 above.

(30) The Committee requests the State party to disseminate its report, with the written answers to the Committee's oral questions, and the conclusions and recommendations of the Committee widely, in all appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee, having concluded that during the consideration of the report of South Africa sufficient information was presented to cover the seven-year period of delay in submitting the initial report, decided to request the second periodic report by 31 December 2009.

38. Tajikistan

(1) The Committee considered the initial report of Tajikistan (CAT/C/TJK/1) at its 726th and 729th meetings (CAT/C/SR.726 and 729), held on 7 and 8 November 2006, and adopted, at its 744th meeting, held on 20 November 2006 (CAT/C/SR.744), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the initial report of Tajikistan and the valuable information presented therein, although observing that the report is submitted 10 years late. Also, the report should have covered the entire period from 1995 to 2004, instead of only 2000 to 2004.

(3) The Committee welcomes the additional information provided by the high-level delegation in its introductory remarks and its readiness to answer the questions raised. The Committee notes, however, that, due to lack of time, many of the questions asked by the Committee in the review of the initial report remained unanswered.

B. Positive aspects

(4) The Committee notes the following positive measures:

(a) The ratification by the State party of the major international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) The ratification of other important instruments that contribute to the protection of human rights, such as the Rome Statute of the International Criminal Court and the United Nations Convention against Corruption;

(c) The establishment of the Government Commission on Ensuring Compliance with International Human Rights Obligations and the Office for Constitutional Guarantees of Citizens' Rights;

(d) The transfer of authority over the prison system from the Ministry of Internal Affairs to the Ministry of Justice;

(e) The opening to international scrutiny as seen in its authorizing the visit by the Special Rapporteur on the independence of judges and lawyers in 2005;

(f) The assurance by the representative of the State party that due consideration will be given to introducing arrest warrants in the draft Criminal Code;

(g) The current policy of commuting of all existing death sentences in the State party;

(h) The adoption of article 130 of the Criminal Code, establishing that human trafficking is a criminal offence.

C. Principal subjects of concern and recommendations

Definition

(5) The definition of torture provided in domestic law (arts. 117, 316 and 354 of the 1998 Criminal Code) is not fully in conformity with the definition in article 1 of the Convention, particularly regarding purposes of torture and its applicability to all public officials and others acting in an official capacity.

The State party should adopt domestic legislation in line with article 1 of the Convention to address all the purposes therein, and it should ensure that acts of torture by State agents, including the acts of attempting to torture or complicity in it, ordering or participating in torture, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed.

Torture

(6) There are numerous allegations concerning the widespread routine use of torture and ill-treatment by law enforcement and investigative personnel, particularly to extract confessions to be used in criminal proceedings. Further, there is an absence of preventive measures to ensure effective protection of all members of society from torture and ill-treatment.

The State party should publicly condemn the practice of torture and take immediate and effective measures to prevent all acts of torture throughout the country, with particular attention to preventing any such acts by law enforcement and criminal justice personnel.

Detention

(7) The Committee is also concerned at:

(a) The lack of a legal obligation to register detainees immediately upon loss of liberty, including before their formal arrest and arraignment on charges, the absence of adequate records regarding the arrest and detention of persons, and the lack of regular independent medical examinations;

(b) Numerous and continuing reports of hampered access to legal counsel, independent medical expertise and contacts with relatives in the period immediately following arrest, due to current legislation and actual practice allowing a delay before registration of an arrest and conditioning access on the permission or request of officials;

(c) Reports that unlawful restrictions of access to lawyers, doctors and family by State agents are not investigated or perpetrators duly punished;

(d) The lack of fundamental guarantees to ensure judicial supervision of detentions, as the Procuracy is also empowered to exercise such oversight;

(e) The extensive resort to pretrial detention that may last up to 15 months; and

(f) The high number of deaths in custody.

The State party should:

(a) Adopt measures to ensure detainees prompt access to a lawyer, doctor and family members from the time they are taken into custody and ensure that legal assistance and independent medical expertise be provided at the request of detained persons rather than solely when permitted or requested by officials;

(b) Take measures to establish registers of detainees at each place of custody with the names of each person detained, the time and date at which notifications of lawyers, doctors and family members took place and the results of independent medical examinations. These registers should be accessible to the detainee and his/her lawyers;

(c) Consider the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, alone or together with an appropriate independent body with forensic expertise;

(d) Take steps to shorten the current pretrial detention period (*doznanie*);

(e) Ensure independent judicial oversight separate from the Procuracy of the period and conditions of pretrial detention, including that imposed by the Ministry of Security; and

(f) Ensure prompt, impartial and full investigations into all complaints and into all instances of deaths in custody, making results available to relatives of the deceased.

Trafficking and violence against women and children

(8) There are persistent reports of trafficking in women and children, the alleged involvement of officials in acts of trafficking and a notable absence of information on sentences handed down to State agents under articles 130 and 132 of the Criminal Code. The Committee is concerned about continuing allegations of violence and abuse of women and children, including sexual violence.

The State party should take effective measures to prosecute and punish violence against women and children and trafficking in persons, including developing, monitoring, adopting appropriate legislation and raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.

Juvenile justice system

(9) The State party lacks a well-functioning juvenile justice system in the country, with children often being subjected to the same procedures, laws and violations as adults.

The State party should take the necessary steps to protect juveniles from breaches of the Convention, and ensure the proper functioning of a juvenile justice system in compliance with international standards.

Independence of the judiciary

(10) In the State party, there is inadequate independence and effectiveness of the judiciary, as judges are both appointed and dismissed by the President and the Procuracy has the double responsibility for prosecution and oversight of investigations into complaints, and it is empowered to prevent implementation of court decisions.

The State party should:

(a) Make every effort to guarantee the independence of the judiciary fully in line with the Basic Principles on the Independence of the Judiciary;

(b) Establish a fully independent body outside the Procuracy to provide oversight on the proper conduct of investigations, which is empowered to receive and investigate individual complaints.

(11) There is a limited practice of the Constitutional Court in reviewing the conformity of domestic legislation with the Constitution and international human rights norms.

The State party should expand the scope of the Constitutional Court to ensure that domestic legislation is in line with the Constitution and international human rights instruments.

Applicability of the Convention

(12) There is a failure by courts to invoke directly the Convention in proceedings as well as a failure to train judges on its direct applicability.

The State party should take all appropriate measures, including legislation and training, to ensure that domestic courts of general jurisdiction actively apply international human rights norms, and in particular the Convention, in proceedings, as provided in article 10 of the Constitution of the State party.

Non-refoulement and extraditions

(13) There is a failure by the State party to provide access to lawyers and to appeal bodies for the purpose of challenging a deportation decision for persons at risk of deportation to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture.

> **The State party should fully implement its obligations under article 3 of the Convention, and cooperate with representatives of the Office of the United Nations High Commissioner for Refugees, including granting effective access to files pertaining to asylum-seekers.**

Training

(14) There is a lack of training by officials on the prohibition against torture. In particular, the Committee is concerned about the lack of practical training for (a) doctors, in the detection of signs of torture or ill-treatment of persons who have been or are in custody; and (b) law enforcement personnel and judges, in initiating prompt and impartial investigations.

> **The State party should ensure that law enforcement, judicial, medical and other personnel who are involved in custody, interrogation or treatment or who otherwise come into contact with detainees, are provided with the necessary training with regard to the prohibition of torture. It should also ensure that the requalification procedure ("re-attestation") of those personnel include both verification and an awareness of the Convention's requirements and a review of their records in treating detainees.**

Interrogation

(15) There are continuing and reliable allegations concerning the frequent use of interrogation methods that are prohibited by the Convention by both law enforcement officials and investigative bodies.

> **The State party should ensure that no recourse is made by law enforcement personnel, under any circumstance, to interrogation methods that constitute torture or ill-treatment. Further, the State party should ensure that interrogation guidelines and methods are in full conformity with the Convention.**

Systematic review of all places of detention

(16) There are reports that there is no systematic review of all places of detention, by national or international monitors, and that regular and unannounced access to such places is not permitted.

> **The State party should consider setting up a national system to review all places of detention and cases of alleged abuses while in custody, ensuring that national and international monitors are granted permission to carry out regular, independent, unannounced and unrestricted visits to all places of detention. To that end, the State party should establish transparent administrative guidelines and criteria for access, and facilitate visits by independent national monitors and others such as the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and independent non-governmental organizations. The State party should consider becoming party to the Optional Protocol to the Convention.**

Impunity

(17) There is an apparent lack of convictions under article 117 of the Criminal Code of public officials or others acting in an official capacity for acts of torture and ill-treatment and a very small number of convictions under domestic law for violations of the Convention, despite numerous allegations of torture and ill-treatment. Further, the Committee is concerned about the fact that acts of torture and ill-treatment in the years 1995 to 1999 were immunized from punishment by amnesty laws, thereby entrenching impunity of those responsible for torture, and a lack of reparation for the victims.

The State party should take effective legislative, administrative and judicial measures, such as the establishment of an independent body, to ensure that all allegations of acts of torture and ill-treatment by State agents are investigated, prosecuted and the perpetrators punished, including for acts of torture and ill-treatment that occurred during the years 1995 to 1999. In connection with prima facie cases of torture, the suspects should be subject to suspension or reassignment during the investigation.

Right to complain and obtain redress

(18) The Committee is concerned at:

(a) The lack of appropriate legislation and any effective, independent mechanism to permit victims of acts of torture and ill-treatment to complain and have their case examined promptly and impartially; and

(b) The lack of witness protection legislation and mechanisms, and of compensation for victims.

The State party should establish a fully independent complaints mechanism, outside the Procuracy, for persons who are held in official custody; amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture; and ensure that all persons who report acts of torture or ill-treatment are adequately protected. The State party should consider establishing a national human rights institution in accordance with the Paris Principles. Further, the State party should enable victims of all forms of torture to file complaints and receive fair and adequate compensation in a timely manner, including cases from 1995 to 1999.

Statements made as a result of torture

(19) There is a reported failure of judges to dismiss or return cases for further investigation in instances where confessions were obtained as a result of torture, and numerous allegations of statements obtained as a result of torture being used as evidence in legal proceedings. This is facilitated by the absence of legislation expressly prohibiting the use of evidence obtained as a result of torture in legal proceedings.

The State party should review cases of convictions based solely on confessions in the period since Tajikistan became a party to the Convention, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. The State party should provide to the Committee information on any jurisprudence that excludes statements obtained as a result of torture being admitted as evidence. In addition, the State party should revise its legislation to prohibit the use of evidence obtained as a result of torture in court proceedings.

Prison conditions

(20) There are allegations of poor conditions of detention, in particular, overcrowding, poor sanitation, staffing shortages and a lack of medical attention for detainees.

The State party should take all necessary measures to improve conditions of detention.

(21) The Committee further recommends that the State party consider making the declaration under articles 21 and 22 of the Convention.

(22) The Committee requests the State party to provide in its next periodic report detailed statistical data regarding cases of torture and other forms of cruel, inhuman or degrading treatment or punishment reported to administrative authorities and the related investigations, prosecutions and penal and disciplinary sentences, including details of applied articles of the Criminal Code, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of place of deprivation of liberty, where it occurred. In addition, information is also requested on any compensation and rehabilitation provided to victims, including cases from 1995 to 2000.

(23) The State party is encouraged to disseminate widely its initial periodic report, summary records and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(24) The Committee welcomes the assurances given by the delegation that written information will be submitted regarding the questions that remained unanswered, including information on the period from 1995 to 1999 and on the arrest of Mahmadruzi Iskandarov.

(25) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 16, 17 and 19 above.

(26) The State party is invited to submit its next periodic report, which will be considered as the second periodic report, by 31 December 2008.

39. Denmark

(1) The Committee considered the fifth periodic report of Denmark, including Greenland, (CAT/C/81/Add.1 (Part I) and CAT/C/81/Add.2, Part II) at its 757th and 760th meetings, held on 2 and 3 May 2007 (CAT/C/SR.757 and CAT/C/SR.760), and adopted, at its 773rd meeting on 14 May 2007 (CAT/C/SR.773), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the State party's fifth periodic report which was submitted on time and follows the Committee's guidelines for reporting. The Committee welcomes the information provided on the measures taken to follow-up to the Committee's previous recommendations and on Greenland's judicial system and its reform in the second part of the State party's report (CAT/C/81/Add.2, Part II). The Committee also welcomes the State party's thorough written replies to the list of issues (CAT/C/DNK/Q/5/Rev.1/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.

(3) The Committee notes with satisfaction the constructive efforts made by the multi-sectoral delegation of the State party to provide additional information and explanation during the dialogue.

B. Positive aspects

(4) The Committee welcomes the State party's ongoing efforts to improve conditions in prisons, including the additional resources allocated to administer the daily occupancy rates. In particular, the Committee welcomes the State party's efforts to introduce alternative measures to custodial ones, such as the use of electronic monitoring, so called "tagging".

(5) With regard to traumatized refugees and their families residing in Denmark, the Committee notes with appreciation funds allocated to special projects, which are set to run until 2010, to facilitate their rehabilitation and improve their living conditions.

(6) The Committee also notes with appreciation the State party's decision to allocate additional funds to improve the living conditions in asylum centres, in particular the living conditions of families with children.

(7) The Committee welcomes the State party's cooperation with non-governmental organizations engaged in eradicating torture and providing assistance and rehabilitation to victims of torture in Denmark and internationally.

(8) The Committee commends the State party for its global efforts to promote respect for human rights, in particular to combat and eradicate torture, such as:

(a) Being one of the world's largest bilateral donors in terms of development assistance per capita, and in this context developing a national framework for bilateral cooperation against torture;

(b) Contributing to United Nations agencies, programmes and funds, including the United Nations Voluntary Fund for the Victims of Torture;

(c) Promoting the universal ratification of the Optional Protocol to the Convention, including the State party's early ratification of the Optional Protocol in 2004, and supporting its implementation;

(d) Presenting a draft resolution against torture to the Third Committee of the General Assembly of the United Nations as well as the former Commission on Human Rights, and taking initiatives to structure and strengthen the newly established Human Rights Council's action against torture;

(e) Playing an active role in the implementation of the Guidelines to European Union policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment.

C. Principal subjects of concern and recommendations

Incorporation of the Convention

(9) The Committee regrets that the State party has not changed its position with regard to the incorporation of the Convention into Danish law. The Committee is of the view that the incorporation of the Convention into Danish law would not only be of a symbolic nature but that it would strengthen the protection of persons allowing them to invoke the provisions of the Convention directly before the courts.

The Committee recommends that the State party incorporate the Convention into Danish law in order to allow persons to invoke it directly in courts, to give prominence to the Convention as well as to raise awareness of its provisions among members of the judiciary and the public at large.

Definition of torture

(10) The Committee notes that the Ministry of Justice has recently requested the Standing Committee on Criminal Matters to consider the possibility of inserting a special provision on torture in the Criminal Code. Notwithstanding the State party's ongoing efforts to review this issue and the existing provisions of the Criminal Code, the Committee reiterates the concern expressed in its previous conclusions and recommendations (CAT/C/CR/28/1, para. 6 (a)) with regard to the absence of a specific offence of torture, consistent with articles 1 and 4, paragraph 2, of the Convention. While noting the introduction of a Defence Command Directive on the prohibition of torture and other cruel, inhumane or degrading treatment or punishment in the Armed Forces, the Committee regrets the State party's decision to exclude a special provision of torture from the new Military Criminal Code (arts. 1 and 4).

The Committee calls upon the State party to incorporate a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code as well as in the Military Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention.

Statute of limitations

(11) The Committee notes with concern that the offence of torture, which as such does not exist in the Danish Criminal Code, is punishable under other provisions of the Criminal Code, and is, therefore, subject to the statute of limitations. While noting that acts of torture that amount to a war crime or a crime against humanity, according to the Rome Statute of the International Criminal Court, ratified by the State party on 21 June 2001, will not be subject to any statute of limitations due to section 93a of the Criminal Code, the Committee is concerned that the statute of limitations applicable to those other provisions of the Criminal Code may prevent investigation, prosecution and punishment of these grave crimes, in particular when the punishable act has been committed abroad. Taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1 and 4).

The State party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Non-refoulement

(12) The Committee takes note of the information received that the Danish Special Forces captured 34 men and handed them over to allied forces during a joint military operation in Afghanistan in February-March 2002, in circumstances where allegations later emerged of ill-treatment while the men were in allied forces' custody. The Committee also notes the State party's assurance that it undertook a full investigation of the incident reaching the conclusion that it did not violate article 12 of the Third Geneva Convention by handing over the detainees. Finally, the Committee takes note of the State party's assurances that all detainees were released shortly after their transfer to allied forces' custody and that none of them were ill-treated while in the said custody.

(13) The Committee recalls its constant view (CAT/C/CR/33/3, paras. 4 (b) and (d), and 5 (e) and (f) and CAT/C/USA/CO/2, paras. 20 and 21) that article 3 of the Convention and its obligation of non-refoulement applies to a State party's military forces, wherever situated, where they exercise effective control over an individual. This remains so even if the State party's forces are subject to operational command of another State. Accordingly, the transfer of a detainee from its custody to the authority of another State is impermissible when the transferring State was or should have been aware of a real risk of torture (art. 3).

> **With regard to the transfer of detainees within a State party's effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances.**

Solitary confinement

(14) The Committee notes with appreciation that the upper limit for solitary confinement of persons under the age of 18 is reduced from eight weeks to four weeks. Despite the amendments of the Administration of Justice Act to limit the use of solitary confinement in general, and in particular with respect to persons under the age of 18, the Committee remains concerned at the placement of persons in prolonged solitary confinement during pretrial detention. It notes with particular concern that persons, including persons under the age of 18, suspected of offences against the independence and security of the State (chapter 12 of the Criminal Code) or against the Constitution and the supreme authorities of the State (chapter 13 of the Criminal Code) may be held indefinitely in solitary confinement during their pretrial detention. However, the Committee notes that there is a judicial review mechanism in place to review the need to continue the solitary confinement (art. 11).

> **The State party should continue to monitor the effects of solitary confinement on detainees and the effects of the 2000 and 2006 amendments to the Administration of Justice Act which have reduced the number of grounds that may give rise to solitary confinement and its duration. The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. Solitary confinement of persons under the age of 18 should be limited to very exceptional cases. The State party should aim at its eventual abolition (CRC/C/DNK/CO/3, paras. 58-59).**
>
> **With regard to persons suspected of offences against the independence and security of the State (chapter 12 of the Criminal Code) or against the Constitution and the supreme authorities of the State (chapter 13 of the Criminal Code) who may be held indefinitely in solitary confinement during their pretrial detention, the State party should ensure respect for the principle of proportionality and establish strict limits on its use. In addition, the State party should increase the level of psychological meaningful social contact for detainees while in solitary confinement.**

Prompt and impartial investigations

(15) The Committee notes that the State party has responded to the criticism raised by the case of the death in police custody of Jens Arne Ørskov in June 2002, and other individual cases, by setting up a broad-based committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers. Nevertheless, the Committee is concerned at allegations of violations committed by law enforcement officials and, in particular, at the fact that the impartiality of subsequent investigations has been questioned (arts. 12, 13 and 14).

The State party should ensure that all allegations of violations committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially. It should also ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention. The State party should expedite the ongoing review process and provide the Committee with detailed information on the results of this process.

Excessive use of force, including killings, by law enforcement officials

(16) The Committee is concerned at reports emerging of alleged excessive use of force, such as the use of physical violence and tear gas, by law enforcement officials during the "Ungdomshus" Youth House riots in Copenhagen in March 2007. The Committee also notes with concern reports suggesting that a number of persons had been killed by Danish law enforcement officials over the past two years (arts. 10, 12, 13, 14 and 16).

The State party should review the existing framework to handle allegations of excessive use of force, including the use of weapons, by law enforcement officials to ensure its compliance with the Convention. The State party should ensure prompt and impartial investigations into all complaints or allegations of misconduct, in particular when a person dies or is seriously injured following contact with law enforcement officials. In addition, the State party should review and strengthen its education and training programmes relating to the use of force, including the use of weapons, by law enforcement officials in order to ensure that the use of force is strictly limited to that required to perform their duties.

Long waiting periods in asylum centres

(17) Despite the measures taken to improve the living conditions and activities in asylum centres, in particular the conditions for asylum-seeking families with children, the Committee is concerned at unduly long waiting periods in asylum centres and the negative psychological effects of long-term waiting and of the uncertainty of daily life on asylum-seekers (art. 16).

The State party, while improving the living conditions in asylum centres, should take into consideration the effects of long waiting periods and provide both children and adults living in asylum centres with educational and recreational activities as well as adequate social and health services.

Reform of Greenland's judicial system

(18) The Committee notes with interest the proposals and recommendations of the Commission on Greenland's Judicial System (report No. 1442/2004), particularly with regard to the treatment of remand prisoners and other detainees, the preparation of pre-sentence reports, the surrender or presentation to the court of documents or other issues of importance in relation to the conduct of criminal proceedings, and the prison structure. It also notes with interest the ongoing drafting of a new Special Criminal Code and a new Special Administration of Justice Act for Greenland.

The State party should expedite the ongoing drafting and adoption of a new Special Criminal Code and a new Special Administration of Justice Act for Greenland, ensuring that all provisions of these new acts are in full conformity with the Convention as well as with other relevant international standards.

(19) The Committee requests the State party to provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims.

(20) The State party is encouraged to disseminate widely the reports submitted by Denmark to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, to the media and non-governmental organizations.

(21) The Committee invites the State party to submit its core document in accordance with the requirements regarding the common core document in the harmonized guidelines on reporting under international human treaties, approved by the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).

(22) The Committee requests the State party to provide, within one year, information on the measures taken to implement the Committee's recommendations contained in paragraphs 15, 16 and 19.

(23) The State party is invited to submit its seventh periodic report by 30 June 2011.

40. Italy

(1) The Committee considered the fourth periodic report of Italy (CAT/C/67/Add.3) at its 762nd and 765th meetings (CAT/C/SR.762 and 765), held on 4 and 7 May 2007, and adopted, at its 777th and 778th meetings (CAT/C/SR.777 and 778), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of Italy and the information presented therein, but it regrets that the report did not follow the Committee's guidelines for reporting. The Committee expresses its appreciation for the dialogue with the State party's large and high-level delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/ITA/Q/4/Rev.1/Add.1), which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral and written responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has ratified the following international instruments:

(a) The United Nations Convention against Transnational Organized Crime, on 2 August 2006;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 2 August 2006;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution, on 9 May 2002;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 9 May 2002;

(e) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 22 September 2000; and

(f) The Rome Statute of the International Criminal Court, on 26 July 1999.

(4) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) Act No. 38/2006, which amends Act No. 269/1998, entitled "Provisions against the exploitation of child prostitution, child pornography, sexual tourism, as new forms of "reduction into slavery" and updates the existing legislation on unlawful acts against children;

(b) Act No. 7/2006 on the prohibition of female genital mutilation;

(c) Act No. 74/2005, entitled "Voluntary contributions to the United Nations Fund for Victims of Torture";

(d) Act No. 228/2003 on "Measures against trafficking in human beings";

(e) The introduction in 2002 of the crime of torture in article 185 bis of the Military Penal Code in Time of War;

(f) Act No. 154/2001, entitled "Measures against violence within the household";

(g) The entry into force of the Guidelines on the management of centres for immigrants, issued under the Directive of the Minister of Interior on 8 January 2003;

(h) The Directive by the Minister of the Interior which entered into force on 8 March 2007 in order to facilitate the taking into care, by the National System of Protection for Asylum-seekers, of unaccompanied minors who reach the Italian borders;

(i) The establishment of the Committee for the Protection of Foreign Minors to set the methods and modalities for the reception and temporary protection of unaccompanied foreign minors at the national level; and

(j) The establishment of the National Anti-Racial Discrimination Office (UNAR) which started its activities in September 2004.

C. Principal subjects of concern and recommendations

Definition of torture/introduction of a crime of torture

(5) Notwithstanding the State party's assertion that, under the Italian Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable and while noting the draft law (Senate Act No. 1216) which has been approved by the Chamber of Deputies and is currently awaiting consideration in the Senate, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

> **The Committee reiterates its previous recommendation (A/54/44, para. 169 (a)) that the State party proceed to incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that these offences are punished by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.**

Preventive detention

(6) The Committee expresses its concern at the length of preventive detention. It also regrets that the maximum period for preventive detention is set by reference to the penalty for the offence of which the person stands accused (arts. 2, 11 and 16).

> **The State party should urgently take appropriate measures to considerably reduce the length of preventive detention and restrict such detention to those cases, where it is deemed to be strictly necessary. Furthermore, the Committee encourages the State party to apply alternative non-custodial measures.**

Fundamental safeguards

(7) The Committee is concerned at allegations that fundamental legal safeguards for persons detained by the police, including the rights of access to a lawyer, are not being observed in all situations. In this respect, the Committee is concerned that Act. No. 155/2005 (the "Pisanu Decree") includes a provision that extends the

permissible period of deprivation of liberty by the police for identification purposes from 12 to 24 hours. Furthermore, an accused person may be held in detention for five days under a reasoned decree adopted by an investigating judge before being allowed to contact an attorney (arts. 2, 13 and 16).

> **The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police are respected. The State party should reduce the maximum period during which a person may be held in custody following arrest on a criminal charge, even in exceptional circumstances, to less than the present five days. Furthermore, the State party should ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty.**

National human rights institution

(8) The Committee notes that the State party has not yet established a national human rights institution. However, it takes note of the approval of the Chamber of Deputies on 4 April 2007 of Senate Act No. 1463 on the establishment of a national institution for the protection of human rights, including a Guarantor for the rights of detainees (art. 2).

> **The State party should proceed with the establishment of an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134. In this respect, the State party is encouraged to promptly adopt the necessary legislation.**

Detention of asylum-seekers and non-citizens

(9) The Committee is concerned at the detention policy applied to asylum-seekers and other non-citizens, including reports that they often face lengthy periods of detention in the Temporary Detention Centres (CPTs) and the "temporary stay and assistance centres" (CPTAs). In this respect, the Committee regrets the change in the legislative framework resulting from Law No. 189/2002 (the "Bossi-Fini law") which permits the detention of undocumented migrants and doubles the detention period (from 30 to 60 days) (arts. 2, 11 and 16).

> **The State party should take effective measures to ensure that detention of asylum-seekers and other non-citizens is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time. The State party should also ensure that courts carry out a more effective judicial review of the detention of these groups.**

Access to a fair and prompt asylum procedure

(10) The Committee welcomes the new draft law on asylum (NO. C. 2410) which was submitted to the Chamber of Deputies on 19 March 2007, and it notes with appreciation the statement by the State party's delegation that the adoption of a comprehensive legislation on political asylum is under due consideration. However, the Committee is concerned that some asylum-seekers may have been denied the right to apply for asylum and to have their asylum claim assessed individually in a fair and satisfactory procedure (arts. 2 and 16).

> **The State party should adopt appropriate measures to ensure that all asylum-seekers have access to a fair and prompt asylum procedure. In this respect, the Committee recalls the obligation of the State party to ensure that the situation of each migrant is processed individually, and the Committee further recommends that the State party proceed with the adoption of a comprehensive legislation on political asylum.**

Non-refoulement

(11) The Committee notes with concern that individuals may not have been able, in all cases, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return or deportation to another country. The Committee is particularly concerned at reports of forcible and collective expulsions from the island of Lampedusa to Libya of persons not of Libyan origin (arts. 3 and 16).

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or deportation.

In this respect, the State party should ensure that the relevant alien policing authorities carry out a thorough examination, prior to making an expulsion order, in all cases of foreign nationals who have entered or stayed in Italy unlawfully, in order to ensure that the person concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country where he/she would be returned to.

(12) The Committee is particularly concerned that article 3 of the "Pisanu Decree" has introduced a new procedure of expulsion of both regular and irregular migrants suspect of being involved in terrorist activities, which, according to the State party, will be in force until 31 December 2007 as an exceptional measure of prevention. The Committee also expresses its concern at the immediate enforcement of these expulsion orders, without any judicial review, and is concerned that this expulsion procedure lacks effective protection against refoulement (arts. 2 and 3).

The Committee recalls the absolute nature of the right of each person not to be expelled to a country where he/she may face torture or ill-treatment and urges the State party to reconsider this new expulsion procedure. When determining the applicability of its non-refoulement obligations, under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case and ensure that adequate judicial mechanisms for the review of the decision are in place.

Universal jurisdiction

(13) The Committee notes the State party's assurances that the Convention applies to the acts of Italian troops or police officers who are stationed abroad, whether in a context of peace or armed conflict. However, the Committee expresses its concern at the way in which the competent authorities, notably the judicial authorities, conducted the proceedings in respect of the incidents in Somalia involving Italian troops as well as the lack of detailed information on the progress and result of the judicial proceedings resulting from these incidents, as requested by the Committee in its previous conclusions and recommendations (A/54/44, para. 169 (b)) (arts. 5 and 12).

The State party should make sure that it acts in compliance with article 5 of the Convention and take the necessary measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials and Italian troops, in Italy or abroad, and try perpetrators as well as impose appropriate sentences on those convicted.

Extradition

(14) The Committee notes with concern how the competent judicial authorities have dealt with a request for extradition in respect of an Argentinean military officer caught in Italian territory in 2001 under an international warrant of arrest issued by France for the abduction and torture of a French citizen in Argentina in 1976 (arts. 7 and 9).

The State party should take the necessary measures to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

Training

(15) The Committee takes note with appreciation of the detailed information provided by the State party on training for its law enforcement officials, penitentiary staff, border guards and armed forces. However, the Committee regrets the lack of information on training on the employment of non-violent means, crowd control and the use of force and firearms. In addition, the Committee regrets that there is no available information on the impact of the training conducted for law enforcement officials and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop and implement educational programmes to ensure that:

(a) All law enforcement officials, border guards and personnel working in the CPTs and CPTAs are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted; and

(b) All law enforcement officers are adequately equipped and trained to employ non-violent means and only resort to the use of force and firearms when strictly necessary and proportionate. In this respect, the Italian authorities should conduct a thorough review of current policing practices, including the training and deployment of law enforcement officials in crowd control and the regulations on the use of force and firearms by law enforcement officials.

Furthermore, the Committee recommends that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on the reduction of cases of torture and ill-treatment.

Conditions of detention

(16) The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, including the practice of collective pardon (Law No. 241 of 31 July 2006) and the prison-building programme adopted through the Ministerial Order of 2 October 2003, there is continuing overcrowding and understaffing in prisons. The Committee notes information provided on the improvement in penitentiary health care but it is concerned at reports of ill-treatment, including unsuitable infrastructures and unhygienic living conditions, in CPTAs and identification centres. While noting the recent Directive concerning the access to centres for immigrants by the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the International Committee of the Red Cross (ICRC), the Committee is also concerned at the absence of an independent organization that can systematically monitor the management of the centres (arts. 11 and 16).

The State party should continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities as needed. The State party should also take appropriate measures to ensure the prompt appointment of additional prison staff, including staff in the educational and health areas.

The State party should take effective measures to further improve living conditions in the immigration centres and ensure that a system of systematic monitoring be set up. In this respect, the Committee recommends that an independent body should monitor the management of these centres, respect for the human rights of the people held there and the health, psychological and legal assistance provided.

Treatment and excessive use of force

(17) The Committee notes with concern continued allegations of excessive use of force and ill-treatment by law enforcement officials. In this respect, the Committee is particularly concerned at reports emerging of alleged excessive use of force and ill-treatment by law enforcement officials during the demonstrations in Naples (March 2001) in the context of the Third Global Forum, the G8 Summit in Genoa (July 2001) and in Val di Susa (December 2005). The Committee is also concerned that such incidents have reportedly occurred during football matches but it notes the recent adoption of Act No. 41/2007, entitled "Urgent measures on the prevention and the repression of violence cases occurring during football matches" (arts. 12, 13 and 16).

The Committee recommends that the State party should take effective measures to:

(a) Send a clear and unambiguous message to all levels of the police force hierarchy and to prison staff that torture, violence and ill-treatment are unacceptable, including through the introduction of a code of conduct for all officials;

(b) Certify that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports; and

(c) Ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.

Furthermore, the State party should report to the Committee on the progress of the judicial and disciplinary proceedings related to the above-mentioned incidents.

(18) The Committee is concerned at reports that law enforcement officers did not carry identification badges during the demonstrations in connection with the 2001 G8 summit in Genoa which made it impossible to identify them in case of a complaint of torture or ill-treatment (arts. 12 and 13).

The State party should make sure that all law enforcement officials on duty be equipped with visible identification badges to ensure individual accountability and the protection against torture, inhuman or degrading treatment or punishment.

Prompt and impartial investigations

(19) The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. The Committee notes with concern that the offence of torture, which as such does not exist in the Italian Criminal Code but rather is punishable under other provisions of the Criminal Code, might in some cases be subject to the statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations and it welcomes the statement made by the State party's delegation that it is considering a modification of the time limitations (arts. 1, 4, 12 and 16).

The Committee recommends that the State party should:

(a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention: and

(c) Review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Compensation and rehabilitation

(20) The Committee regrets the absence of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the

lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims. However, the Committee welcomes information provided by the State party on the amendment in March 2007 of Senate Act No. 1216 referring to the introduction of the crime of torture, in order to introduce a domestic fund for the victims of torture (art. 14).

> **The State party should strengthen its efforts in respect of compensation, redress and rehabilitation provided to victims, including the means for as full rehabilitation as possible and develop a specific programme of assistance in respect of victims of torture and ill-treatment.**
>
> **Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes. The State party is encouraged to adopt the necessary legislation, establish a domestic fund for victims of torture and allocate sufficient financial sources for its effective functioning.**

Vulnerable groups, including the Roma

(21) While noting a number of measures adopted by the State party, including the establishment of UNAR and the Registry of Associations Working against Discrimination, the Committee expresses its concern at reports of acts of violence against and discrimination of vulnerable groups, in particular the Roma, foreigners and Italians of foreign origin and the reluctance on the part of the police and authorities to provide adequate protection to the victims and to effectively investigate those crimes (arts. 2, 12, 13 and 16).

> **The State party should intensify its efforts to combat discrimination against and ill-treatment of vulnerable groups, including the Roma, foreigners and Italians of foreign origin. In this respect, the Committee recommends that the State party should:**
>
> **(a) Combat racial discrimination, xenophobia and related violence, ensure prompt, impartial and thorough investigations into all such motivated violence and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts;**
>
> **(b) Publicly condemn racial discrimination, xenophobia and related violence and send a clear and unambiguous message that racist or discriminatory acts within the public administration, especially with regard to law enforcement personnel, are unacceptable; and**
>
> **(c) Provide detailed information to the Committee on the effective measures adopted to prevent and combat such violence.**

Trafficking

(22) The Committee welcomes the variety of measures, projects and programmes undertaken by the State party to combat trafficking, including the establishment of an ad hoc inter-ministerial Committee to manage and implement programmes for victims of trafficking as well as the so-called "Article 18 approach", the release of stay permits for social protection reasons for all victims of trafficking providing for their participation in social integration programmes, and Law Decree No. 300 which extends the scope of the system of assistance to and social integration of victims of trafficking to both non-EU and EU citizens. However, the Committee expresses its concern at persistent reports of trafficking in women and children for sexual and other exploitative purposes and, while noting a high number of investigations, it is concerned at the lack of information on prosecutions and sentences in matters of trafficking (arts. 2, 10, 12 and 16).

> **The State party should continue to strengthen its efforts to combat trafficking in women and children and take effective measures to prosecute and punish trafficking in persons, including by strictly applying relevant legislation, raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.**

Domestic violence

(23) While noting various measures taken by the State party, including the survey issued on 21 February 2007 by the National Institute of Statistics (ISTAT) on the issue of physical and sexual violence against women, and the establishment on 8 March 2006 of an ad hoc toll-free number 1522, called "Anti-violence against Women (Anti-violenza Donna)", the Committee remains concerned about the persistence of violence against women and children, including domestic violence. The Committee further regrets that the State party did not provide statistical data on complaints, prosecutions and sentences in matters of domestic violence (arts. 1, 2, 12 and 16).

> **The State party should increase its efforts to prevent, combat and punish violence against women and children, including the adoption of the Bill on "Awareness raising and prevention measures as well as the repression of crimes against the individual or within the household, on account of sexual orientation, gender identity and any other reason of discrimination" (Chamber Act No. 2169) which envisages, inter alia, the systematic collection and analysis of data on violence, including domestic violence.**

Data collection

(24) The Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking and domestic and sexual violence. However, the Committee takes note of the statement by the State party's delegation that the Ministry of Justice is updating its system for the collection of statistical data which is due to be completed by the end of 2007 (arts. 11 and 12).

> **The State party should establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as on compensation and rehabilitation provided to the victims.**

(25) While noting the oral assurances given by the State party's representatives that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is envisaged shortly, the Committee encourages the State party to ratify it.

(26) The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(27) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently approved by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(28) The State party is encouraged to disseminate widely the reports submitted by Italy to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(29) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 12, 16 and 20 above.

(30) The State party is invited to submit its next periodic report, which will be considered as the sixth report, by 30 June 2011.

41. **Japan**

(1) The Committee considered the initial report of Japan (CAT/C/JPN/1) at its 767th and 769th meetings, held on 9 and 10 May 2007 (CAT/C/SR.767 and CAT/C/SR.769), and adopted, at its 778th and 779th meetings on 16 and 18 May 2007 (CAT/C/SR.778 and CAT/C/SR.779), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Japan, as well as the opportunity to initiate a constructive dialogue. In particular, the Committee notes with appreciation the clarifications and explanations provided by the delegation to the numerous oral questions posed by the Committee. The Committee also welcomes the large delegation, representing various departments of the Government, demonstrating the importance given by the State party to meeting its obligations under the Convention. It further welcomes non-governmental organizations present during the discussion of the report.

(3) The Committee regrets, however, that the report, due in July 2000, was submitted over five years late. It also notes that the report does not fully conform to the Committee's guidelines for the preparation of initial reports, insofar as it lacks thorough information on how the provisions of the Convention have been applied in practice in the State party. The initial report is mainly limited to statutory provisions rather than providing an analysis of the implementation of the rights enshrined in the Convention, supported by examples and statistics.

B. Positive aspects

(4) The Committee welcomes the ratification by the State party of the majority of international human rights conventions.

(5) The Committee also welcomes the adoption of:

(b) The Law for Partial Amendment of Immigration Control and Refugee Recognition (Law No. 73 of 2004);

(c) The Act on Penal and Detention Facilities and the Treatment of Inmates, which entered into force on 24 May 2005, and was revised on 2 June 2006.

(6) The Committee notes the establishment of new mechanisms aimed at improving the oversight of detention facilities and to prevent the recurrence of violence, such as the Board of Visitors for Inspection of Penal Institutions and the Review and Investigation Panel on Complaints by Inmates in Penal Institutions. In addition, the Committee welcomes the announcement of the establishment, as of June 2007, of the Board of Visitors for Inspection of Police Custody.

(7) The Committee welcomes the activities of the Corrections Bureau concerning training curricula and practice for penal institution staff, which now include human rights standards as well as behavioural science and psychology.

(8) The Committee also welcomes actions taken by the State party to combat trafficking, and in particular the adoption of the National Plan of Action to combat trafficking in persons of December 2004, and the revisions of the relevant laws and regulations in the Penal Code and the Immigration Control and Refugee Recognition Act.

(9) The Committee welcomes the consultations with civil society undertaken by the State party in the framework of the preparation of the report.

C. Principal subjects of concern and recommendations

Definition of torture

(10) Notwithstanding the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable as a crime under Japanese criminal law, the Committee notes with concern that a definition of torture as provided by article 1 of the Convention, is still not included in the Penal Code of the State party. In particular, the Committee is concerned that "mental torture" as per the Convention's definition is not clearly defined under articles 195 and 196 of the Penal Code and penalties for related acts, such as intimidation, are inadequate. In addition, the Committee is concerned that Japanese legislation does not cover all types of public officials, individuals acting in an official capacity, or individuals acting at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity, such as members of the Self Defence Forces and immigration officials.

The State party should incorporate into domestic law the definition of torture as contained in article 1 of the Convention, encompassing all its constituent elements which characterize torture as a specific crime with appropriate penalties.

Internal applicability of the Convention

(11) The Committee regrets the lack of information on the direct applicability of the Convention, and in particular on any instances of its application by the domestic courts, as well as in times of war.

The State party should provide the Committee with information on the measures taken to ensure the direct applicability by the courts of the Convention, and of examples thereof. The State party should provide information on the applicability of the Convention in times of war.

Statute of limitations

(12) The Committee notes with concern that acts amounting to torture and ill-treatment are subject to a statute of limitations. The Committee is concerned that the statute of limitations for acts amounting to torture and ill-treatment may prevent investigation, prosecution and punishment of these grave crimes. In particular, the Committee regrets the dismissal of cases filed by victims of military sexual slavery during the Second World War, the so-called "comfort women", for reasons related to statutory limitations.

The State party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention, so that acts amounting to torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Independence of the judiciary

(13) The Committee is concerned at the insufficient level of independence of the judiciary, in particular the tenure of judges and the lack of certain necessary safeguards.

The State party should take all necessary measures to reinforce the independence of the judiciary, and in particular ensure the security of tenure of judges.

Non-refoulement

(14) The Committee is concerned that certain provisions in domestic law and practices of the State party do not conform to article 3 of the Convention, and in particular:

(a) The 2006 Immigration Control and Refugee Recognition Act which does not expressly prohibit deportation to countries where there is a risk of torture; in addition, reviewing authorities do not systematically investigate the applicability of article 3;

(b) The lack of an independent body to review refugee recognition applications;

(c) The conditions of detention in landing prevention facilities and immigration detention centres, with numerous allegations of violence, unlawful use of restraining devices during deportation, abuse, sexual harassment, lack of access to proper health care. In particular, the Committee is concerned that, so far, only one case in such a detention centre has been recognized as ill-treatment;

(d) The lack of an independent monitoring mechanism for immigration detention centres and landing prevention facilities, and in particular the lack of an independent agency to which detainees can complain about alleged violations by Immigration Bureau staff members. The Committee is also concerned that the criteria for the appointment of third-party refugee adjudication counsellors are not made public;

(e) The lack of an independent body to review decisions by immigration officials, in light of the fact that the Ministry of Justice does not allow refugee recognition applicants to select legal representatives at the first stage of application, and governmental legal assistance is de facto restricted for non-residents;

(f) Insufficient guarantees of access to judicial review for all asylum-seekers, and allegations of deportations carried out immediately after the administrative procedure has ended;

(g) The undue length of time asylum-seekers spend in custody between rejection of an asylum application and deportation, and in particular reports of cases of indefinite and long-term detention;

(h) The strict character and limited effect of the provisional stay system adopted in the revised 2006 Immigration Law.

The State party should ensure that all measures and practices relating to the detention and deportation of immigrants are in full conformity with article 3 of the Convention. In particular, the State party should expressly prohibit deportation to countries where there are substantial grounds for believing that the individuals to be deported would be in danger of being subjected to torture, and should establish an independent body to review asylum applications. The State party should ensure due process in asylum applications and deportation proceedings and should establish without delay an independent authority to review complaints about treatment in immigration detention facilities. The State party should establish limits to the length of the detention period for persons awaiting deportation, in particular for vulnerable groups, and make public information concerning the requirement for detention after the issuance of a written deportation order.

Daiyo Kangoku (detention in the substitute prison system)

(15) The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto failure to respect the principles of presumption of innocence, right to silence and right of defence. In particular the Committee is gravely concerned at:

(a) The disproportionate number of individuals detained in police facilities instead of detention centres during investigation and up to the point of indictment, and in particular during the interrogation phase of the investigation;

(b) The insufficient separation between the functions of investigation and detention, whereby investigators may be engaged in the transfer of detainees, and subsequently be in charge of investigating their cases;

(c) The unsuitability of the use of police cells for prolonged detention, and the lack of appropriate and prompt medical care for individuals in police custody;

(d) The length of pretrial detention in police cells before indictment, lasting up to 23 days per charge;

(e) The lack of effective judicial control and review by the courts over pretrial detention in police cells, as demonstrated by the disproportionately high number of warrants of detention issued by the courts;

(f) The lack of a pre-indictment bail system;

(g) The absence of a system of court-appointed lawyers for all suspects before indictment, regardless of the categories of crimes with which they are charged. Currently, court-appointed lawyers are limited to cases of felony;

(h) The limitations of access to defence counsel for detainees in pretrial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between defence counsel and detainees, leading to the absence of defence counsel during interrogations;

(i) The limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;

(j) The lack of an independent and effective inspection and complaints mechanism accessible to detainees held in police cells;

(k) The use of gags at police detention facilities, in contrast with the abolition of their use in penal institutions.

The State party should take immediate and effective measures to bring pretrial detention into conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pretrial detention. As a matter of priority, the State party should:

(a) Amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to detention;

(b) Limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards;

(c) Ensure that legal aid is made available to all detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in police records after indictment, in order to enable them to prepare the defence, as well as ensuring prompt access to appropriate medical care to persons while in police custody;

(d) Guarantee the independence of external monitoring of police custody, by measures such as ensuring that prefectural police headquarters systematically include a lawyer recommended by the bar associations as a member of the Board of Visitors for Inspection of Police Custody, to be established as of June 2007;

(e) Establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;

(f) Consider the adoption of alternative measures to custodial ones at pretrial stage;

(g) Abolish the use of gags at police detention facilities.

Interrogation rules and confessions

(16) The Committee is deeply concerned at the large number of convictions in criminal trials based on confessions, in particular in light of the lack of effective judicial control over the use of pretrial detention and the disproportionately high number of convictions over acquittals. The Committee is also concerned at the lack of means for verifying the proper conduct of interrogations of detainees while in police custody, in particular the absence of strict time limits for the duration of interrogations and the fact that it is not mandatory to have defence counsel present during all interrogations. In addition, the Committee is concerned that, under domestic legislation, voluntary confessions made as a result of interrogations not in conformity with the Convention may be admissible in court, in violation of article 15 of the Convention.

The State party should ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms such as electronic and video recording of all interrogations; that detainees are guaranteed access to and the presence of defence counsel during interrogation; and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate

sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention. The State party should provide the Committee with information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.

Conditions of detention in penal institutions

(17) The Committee is concerned over the general conditions of detention in penal institutions, including overcrowding. While welcoming the abolition of the use of leather handcuffs in penal institutions, the Committee notes with concern allegations of instances of improper use of "type 2 leather handcuffs" as punishment. The Committee is concerned at allegations of undue delays in the provision of medical assistance to inmates as well as the lack of independent medical staff within the prison system.

The State party should take effective measures to improve conditions in places of detention, to bring them in line with international minimum standards, and in particular take measures to address current overcrowding. **The State party should ensure strict monitoring of restraining devices, and in particular adopt measures to prevent them being used for punishment. In addition, the** State party **should ensure that adequate, independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.**

Use of solitary confinement

(18) The Committee is deeply concerned at allegations of continuous prolonged use of solitary confinement, despite the new provisions of the 2005 Act on Penal Institutions and the Treatment of Sentenced Inmates limiting its use. In particular, the Committee is concerned at:

(a) The de facto absence of a time limit for solitary confinement, as there is no limit on the renewal of the three-month rule;

(b) The number of detainees who have been in isolation for over 10 years, with one case exceeding 42 years;

(c) Allegations of the use of solitary confinement as a punishment;

(d) The inadequate screening of inmates subject to solitary confinement for mental illness;

(e) The lack of effective recourse procedures against decisions imposing **solitary confinement** upon persons serving sentences;

(f) The absence of criteria to determine the need for solitary confinement.

The State party should amend its current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards. In particular, the State party should consider systematically reviewing all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to releasing those whose detention can be considered in violation of the Convention.

Death penalty

(19) While noting the recent legislation broadening visiting and correspondence rights for death row inmates, the Committee is deeply concerned over a number of provisions in domestic law concerning individuals sentenced to death, which could amount to torture or ill-treatment, and in particular:

(a) The principle of solitary confinement after the final sentence is handed down. Given the length of time on death row, in some cases this exceeds 30 years;

(b) The unnecessary secrecy and arbitrariness surrounding the time of execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty as to the date of execution, as prisoners are notified of their execution only hours before it is due to take place.

The State should take all necessary measures to improve the conditions of detention of persons on death row, in order to bring them into line with international minimum standards.

(20) The Committee is seriously concerned at the restrictions imposed on the enjoyment of legal safeguards by death row inmates, in particular with respect to:

(a) The limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential communication and the lack of access to State defence counsel after the final sentence is handed down;

(b) The lack of a mandatory appeal system for capital cases;

(c) The fact that a retrial procedure or a request for pardon do not lead to suspension of the execution of sentence;

(d) The absence of a review mechanism to identify inmates on death row who may be suffering from mental illness;

(e) The fact that there has been no case of commutation of a death sentence in the last 30 years.

The State party should consider taking measures for an immediate moratorium on executions and a commutation of sentences and should adopt procedural reforms which include the possibility of measures of pardon. A right of appeal should be mandatory for all capital sentences. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.

Prompt and impartial investigations, right to complain

(21) The Committee is concerned at:

(a) The lack of an effective complaints system for persons in police custody. It regrets the fact the 2006 Penal Law does not introduce an independent body with such a mandate. The Committee notes the lack of information on the Board of Visitors for Inspection of Police Detention Cells, to be established in June 2007;

(b) The lack of authority of the Board of Visitors for Inspection of Penal Institutions to investigate cases or allegations of acts of torture or ill-treatment;

(c) The lack of independence of the Review and Investigation Panel on Complaints by Inmates in Penal Institutions, as its secretariat is staffed by personnel of the Ministry of Justice, and its limited powers to investigate cases directly, as it cannot interview prisoners and officers, nor does it have direct access to any related documents;

(d) The statutory limitations on the right of inmates to complain and the impossibility of defence counsel assisting clients to file a complaint;

(e) Reports of adverse consequences to inmates as a result of having filed a complaint and of law suits rejected on the grounds that the term for claiming compensation had expired;

(f) The lack of information on the number of complaints received, as well as the number of investigations initiated and completed and their outcome, including information on the number of perpetrators and sentences received.

The State party should consider establishing an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment from both individuals in pretrial detention at police facilities or penal institutions and inmates in penal institutions. The State party should take all necessary measures to ensure that the right of inmates to complain can be fully exercised, including the lifting of any statute of limitations for acts of torture and ill-treatment; ensuring that inmates may avail themselves of legal representation to file complaints; establishing protection mechanisms against intimidation of witnesses; and reviewing all rulings limiting the right to claim compensation. The State party should provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

Human rights education and training

(22) The Committee notes the allegations of the existence of a training manual for investigators, with interrogation procedures which are contrary to the Convention. In addition, the Committee is concerned that human rights education, and in particular education on the rights of women and children, is only offered systematically to penal institution officials, and has not been fully included in the curricula for police detention officers, investigators, judges or immigration security personnel.

The State party should ensure that all materials related to the education curriculum of law enforcement personnel, and in particular investigators, are made public. In addition, all categories of law enforcement personnel, as well as judges and immigration officials, should be regularly trained in the human rights implications of their work, with a particular focus on torture and the rights of children and women.

Compensation and rehabilitation

(23) The Committee is concerned over reports of difficulties faced by victims of abuse in obtaining redress and adequate compensation. The Committee is also concerned over restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants. The Committee regrets the lack of information on compensation requested and awarded to victims of torture or ill-treatment.

The State party should take all necessary measure to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation. The State party should take measures to establish rehabilitation services in the country. The State party should furnish the Committee with information on any compensation or rehabilitation provided to the victims.

(24) The Committee is concerned at the inadequate remedies for the victims of sexual violence, including in particular survivors of Japan's military sexual slavery practices during the Second World War and the failure to carry out effective educational and other measures to prevent sexual violence- and gender-based breaches of the Convention. The survivors of the wartime abuses, acknowledged by the State party representative as having suffered "incurable wounds", experience continuing abuse and re-traumatization as a result of the State party's official denial of the facts, concealment or failure to disclose other facts, failure to prosecute those criminally responsible for acts of torture, and failure to provide adequate rehabilitation to the victims and survivors.

The Committee considers that both education (article 10 of the Convention) and remedial measures (article 14 of the Convention) are themselves a means of preventing further violations of the State party's obligations in this respect under the Convention. Continuing official denial, failure to prosecute, and failure to provide adequate rehabilitation all contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment, including through educational and rehabilitation measures. The Committee recommends that the State party take measures to provide education to address the discriminatory roots of sexual and gender-based violations, and provide rehabilitation measures to the victims, including steps to prevent impunity.

Gender-based violence and trafficking

(25) The Committee is concerned at continued allegations of **gender-based violence** and abuse against women and children in custody, including acts of sexual **violence** by law enforcement personnel. The Committee is also concerned at the restrictive scope of the State party's legislation covering rape, referring only to sexual intercourse involving male and female genital organs, excluding other forms of sexual abuse and rape of male victims. In addition, the Committee is concerned that cross-border trafficking in persons continues to be a serious problem in the State party, facilitated by the extensive use of entertainment visas issued by the Government, and that support measures for identified victims remain inadequate, leading to victims of trafficking being treated as illegal immigrants and deported without redress or remedy. The Committee is also concerned over the lack of effective measures to prevent and prosecute violence perpetrated against women and girls by military personnel, including foreign military personnel stationed on military bases.

> **The State party should adopt preventive measures to combat sexual** violence **and** violence **against women, including domestic violence and gender-based violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The Committee calls on the State party to strengthen its measures to combat trafficking in persons, including restricting the use of entertainment visas to ensure they are not used to facilitate trafficking, allocate sufficient resources for this purpose, and vigorously pursue enforcement of criminal laws in this regard. The State party is also encouraged to undertake training programmes for law enforcement officials and the judiciary to ensure that they are sensitized to the rights and needs of victims, to establish dedicated police units, and to provide better protection and appropriate care for such victims, including, inter alia, access to safe houses, shelters and psychosocial assistance. The State party should ensure all victims can claim redress before courts of law, including victims of foreign military personnel stationed on military bases.**

Individuals with mental disabilities

(26) The Committee is concerned at the role played by designated private psychiatrists in private hospitals in issuing detention orders for individuals with mental disabilities, and the insufficient judicial control over detention orders, management of private mental health institutions and complaints by patients concerning acts of torture or ill-treatment.

> **The State party should take all necessary measures to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions.**

(27) The Committee encourages the State party to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention.

(28) The Committee encourages the State party to consider becoming party to the **Rome** Statute of the International Criminal Court.

(29) The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, recently recommended by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(31) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 14, 15, 16 and 24.

(32) The State party is invited to submit its second periodic report by 30 June 2011.

42. Luxembourg

(1) The Committee considered the fifth periodic report of Luxembourg (CAT/C/81/Add.5) at its 759th and 762nd meetings, held on 3 and 4 May 2007 (CAT/C/SR.759 and 762), and adopted the following conclusions and recommendations at its 773rd meeting, on 14 May 2007 (CAT/C/SR.773).

A. Introduction

(2) The Committee welcomes the fifth periodic report of Luxembourg, which is in conformity with the guidelines regarding the form and contents of periodic reports, and notes that it was submitted on time. The Committee takes note with satisfaction of the written replies by Luxembourg to the list of issues and the additional information provided orally during consideration of the report. Lastly, the Committee welcomes the constructive dialogue with the high-level delegation sent by the State party and thanks it for its frank and direct replies to Committee members' questions.

B. Positive aspects

(3) The Committee commends the State party for striving to comply with its obligations concerning the protection of human rights in general and those under the Convention in particular.

(4) The Committee notes with satisfaction the following positive developments:

(a) Adoption of the Act of 8 September 2003 on the prevention of domestic violence;

(b) Adoption of the Act of 22 August 2003 establishing the Office of the Ombudsman;

(c) The establishment, pursuant to the Act of 25 July 2002, of a children's rights committee;

(d) The introduction on 1 January 2006 of a new Charter of Ethical Values in the Grand Ducal police force;

(e) The announcement by the delegation of Luxembourg that a bill prohibiting all physical and sexual violence within the family, including genital mutilation, has been submitted to Parliament;

(f) The clarification provided by the delegation of the State party concerning the access of persons detained for preliminary police questioning to a lawyer;

(g) The guarantees contained in the Grand Ducal Regulation establishing a list of safe countries of origin within the meaning of the Act of 5 May 2006 relating to the right of asylum and the right to related forms of protection, which are in conformity with article 3 of the Convention;

(h) The excellent cooperation between the Luxembourg authorities and non-governmental human rights organizations, particularly in the context of assistance to aliens in administrative detention; and

(i) The regular support given by the State party since 1983 to the United Nations Voluntary Fund for Victims of Torture, as well as the increase in the State party's contribution to the Fund.

C. Subjects of concern and recommendations

Non-refoulement and treatment of persons at the disposal of the authorities

(5) The Committee takes note of the statement by the delegation of Luxembourg that a bill concerning the construction of a centre for aliens in administrative detention on a site separate from the Luxembourg Prison has been submitted to Parliament. However, the Committee is concerned by the fact that, pursuant to article 10 of the

Act of 5 May 2006, administrative detention can also be applied in some cases to asylum-seekers, who are then placed in a closed facility within the Luxembourg Prison for a period of up to 12 months to prevent evasion of any subsequent deportation order; this could constitute administrative detention without judicial supervision (arts. 3 and 11).

The State party should take the requisite legislative and administrative measures to clarify the situation of asylum-seekers for whom no deportation order has been issued in order to ensure that, in the absence of behaviour that might compromise security or public order, they are not detained and are properly treated. In particular, the State party should ensure that such asylum-seekers are brought before a judge so that he or she may rule on the legality of their detention. The State party should also guarantee that they have a right to effective remedies. It should also take appropriate measures to ensure that aliens at the disposal of the authorities are placed in a facility that is separate from a penal correction facility.

(6) The Committee is concerned about the provisions of article 6, paragraph 12, of the Act of 5 May 2006, which stipulates that "the asylum-seeker may be handed over or extradited, where applicable, either to a State member of the European Union pursuant to the obligations arising from a European arrest warrant or, for other reasons, to a third State, or to an international criminal tribunal or court"; in some cases, this provision may be inconsistent with the principle of non-refoulement as laid down in article 3 of the Convention (art. 3).

The State party should take the requisite legislative measures to amend article 6, paragraph 12, of the Act of 5 May 2006 on asylum by including a provision stipulating that no person may be returned, expelled or extradited to a State where there are substantial grounds for believing that that person would be in danger of being subjected to torture.

(7) While taking note of some of the clarifications provided by the delegation of Luxembourg regarding the circumstances surrounding the forced removal of Mr. Igor Beliatskii, the Committee regrets that the State party has not ordered an official investigation to ascertain why the officers responsible for the removal operation resorted to certain practices, such as the wearing of a mask and the use of a BodyCuff, which might constitute degrading treatment of the person being removed (arts. 3, 12 and 16).

The State party should take the necessary steps to order an investigation when there are grounds for believing that a person may have been subjected to torture or cruel, inhuman or degrading treatment, including during removal operations. The State party should also allow the presence of human rights observers or independent physicians during all forced removals. It should also systematically allow a medical examination to be conducted prior to this form of removal and whenever an attempted removal has been unsuccessful.

Provisions concerning the detention and treatment of arrested persons

(8) While noting that the Charter of Ethical Values of the Grand Ducal Police stipulates in appendix 4 that "(a police officer) shall have absolute respect for persons, without discrimination of any kind", the Committee is concerned about reports that foreign detainees are subjected to arbitrary behaviour and racist or xenophobic insults by law enforcement and prison personnel (arts. 11 and 16).

The State party should take the necessary steps to:

(a) Provide law enforcement and prison personnel with more training in respect for the physical and psychological integrity of detainees, regardless of their origin, religion or sex;

(b) Make such behaviour a criminal offence;

(c) Order systematic investigations and, in all confirmed cases, bring the accused before the competent courts.

(9) While taking note of the explanations provided by the delegation of Luxembourg regarding solitary confinement, the Committee regrets the persistence of this disciplinary practice and Luxembourg's intention to maintain it despite the earlier recommendations of the Committee against Torture (CAT/C/CR/28/2, paras. 5 and 6) and those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[5] (arts. 11 and 16).

> **The Committee urgently reiterates its recommendation that solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened. The State party should take the necessary steps to put an end to this disciplinary practice and change the relevant regulations accordingly.**

Treatment of minors in conflict with the law and minors at risk

(10) The Committee takes note of the information provided by the State party in its written replies, according to which negotiations have been held between the Ministry of the Family, the Ministry of Public Works and the municipality of Wormeldange with a view to reaching an agreement on completion of the project to build the Dreiborn closed security unit for minors. It also notes that, at the time of consideration of this report, the municipal council had yet to issue a construction permit. However, the Committee continues to be concerned about the placement of minors in the Luxembourg Prison, which cannot be regarded as a suitable environment for them, especially as it cannot be guaranteed that there will be no contact whatsoever between minors and adult detainees. The Committee is also concerned that minors in conflict with the law and those with social or behavioural problems are placed in the same facilities and that minors aged between 16 and 18 may be brought before ordinary courts and tried as adults for particularly serious offences (arts. 11 and 16).

> **The Committee urgently reiterates its previous recommendation that minors should not be placed in adult prisons for disciplinary purposes (CAT/C/CR/28/2, paras. 5 and 6). The State party should also take the necessary steps to build the Dreiborn security unit as soon as possible and, in the interim, to ensure that minors are kept strictly separate from adult detainees.**
>
> **The State party should also keep children in conflict with the law separate from minors with social or behavioural problems, do everything possible to ensure that minors are never tried as adults, and set up an independent monitoring body to inspect juvenile facilities regularly (CRC/C/15/Add.250, para. 61 (c), (d) and (e)).**

Impartial investigation

(11) The Committee is concerned about the system which gives the public prosecutor discretion to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even to order an investigation, in blatant violation of the provisions of article 12 of the Convention (art. 12).

> **In order to respect the letter and spirit of the provisions of article 12 of the Convention, the State party should consider departing from the system which gives the public prosecutor discretion to decide whether to prosecute so that there can be no doubt as to the obligation for the competent authorities to launch impartial investigations immediately and systematically in all cases in which there are reasonable grounds for believing that an act of torture has been committed anywhere in the territory under its jurisdiction.**

Human trafficking

(12) The Committee is concerned by the continued trafficking of human beings in the State party and the inadequate nature of the checks made when artistes' visas are issued, which entails the risk that these visas might be used for the purposes of this illegal activity (art. 16).

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[5] CPT Inf (2004) 12, para. 86.

The State party should strengthen existing measures to combat human trafficking in such a way as to make it possible, on the one hand, to conduct more effective checks when artistes' visas are issued and to ensure that they are not used for unlawful purposes and, on the other, to protect the witnesses and victims of such acts. In addition, the State party should prosecute persons committing and instigating them.

Next periodic report

(13) The Committee invites the State party to include in its next periodic report detailed statistical data, disaggregated by offence, age, ethnic origin and sex, on complaints of acts of torture and other cruel, inhuman or degrading treatment or punishment allegedly committed by law enforcement officials as well as on investigations, prosecutions and relevant criminal and disciplinary sanctions, if relevant. The State party is also invited to include data disaggregated by age, sex and ethnic origin on:

(a) The number of asylum applications registered;

(b) The number of successful asylum applications;

(c) The number of asylum-seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin;

(d) The number of refoulements or expulsions.

(14) The State party is encouraged to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(15) The State party is encouraged to disseminate widely the reports submitted by Luxembourg to the Committee, as well as the Committee's conclusions and recommendations, in the appropriate languages, through official Internet sites, the media and non-governmental organizations.

(16) The Committee invites the State party to present its core document in accordance with the requirements concerning the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, adopted by the Fifth Inter-Committee Meeting of the human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(17) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 11 above.

(18) The State party is invited to submit its seventh periodic report by 30 June 2011.

43. The Netherlands

(1) The Committee considered the fourth periodic report of the Netherlands (CAT/C/67/Add.4) at its 763rd and 766th meetings (CAT/C/SR.763 and 766), held on 7 and 8 May 2007, and adopted on 14 May 2007, at its 774th meeting (CAT/C/SR.774), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of the Netherlands (European part of the Kingdom and Aruba) and the information presented therein. The Committee expresses its appreciation for the frank dialogue with the State party's delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/NET/Q/4/Rev.1/Add.1), including elaborate information on the implementation of the Convention in the Netherlands Antilles, which facilitated discussion between the delegation and members of the Committee. In addition, the Committee appreciates the delegation's oral responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(3) The Committee notes with satisfaction the ongoing efforts undertaken by the State party to combat torture and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the Kingdom of the Netherlands, in particular:

(a) The incorporation of the definition of torture into the domestic legislation of the European part of the Kingdom of the Netherlands;

(b) The entry into force of an amendment of the Dutch Civil Code in April 2007 which prohibits physical and mental violence "for educational purposes", including in the family environment;

(c) The adoption of new legislation on trafficking in human beings in the European part of the Kingdom of the Netherlands in January 2005 and in Aruba in May 2006;

(d) The National Ordinance AB 1999 No. 8 implementing the Convention against Torture in Aruba and the new National Penal System Ordinance AB 2005 No. 75 of December 2005;

(e) The establishment of the Internal Investigations Bureau to receive and investigate complaints and reports of ill-treatment by police officers in Aruba;

(f) The improvement of prison conditions in the Netherlands Antilles, as reported by the State party;

(g) The notable work undertaken by the special team set up in 1998 to investigate and prosecute war crimes and crimes against humanity ("the NOVO team") to bring to justice perpetrators of acts of torture and war crimes;

(h) The State party's cautious approach with regard to the use of diplomatic assurances and its policy of not practising extraordinary rendition of suspects;

(i) The State party's contributions to the United Nations Voluntary Fund for Victims of Torture.

(4) The Committee notes with appreciation the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2002 and the Rome Statute of the International Criminal Court and the entry into force of its implementing act in the Netherlands in 2003.

(5) The Committee also welcomes the assurances given by the State party's representatives that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be ratified in the second half of 2007.

C. Principal subjects of concern and recommendations

Fundamental safeguards

(6) Notwithstanding the State party's establishment in 2006 of a "programme to enhance and strengthen the quality of the performance of police officers and prosecutors" (CAT/C/NET/Q/4/Rev.1/Add.1, para. 50) in the European part of the Kingdom, the Committee is concerned that persons in police detention do not have access to legal assistance during the initial period of interrogation. Similarly, the Committee is concerned that in the Netherlands Antilles, the presence of a lawyer during interrogation is only permitted with the prior authorization of a magistrate.

The State party should review its criminal procedures so that access to a lawyer, as a fundamental legal safeguard, is guaranteed to persons in police custody from the very outset of their deprivation of liberty, particularly where video or audio recording of interrogations, which cannot in any way substitute the presence of legal counsel, are not in place.

Non-refoulement

(7) The Committee is concerned at the difficulties faced by asylum-seekers in the European part of the Kingdom of the Netherlands in substantiating their claims under the accelerated procedure of the 2000 Aliens Act, which could lead to a violation of the non-refoulement principle provided for in article 3 of the Convention. The Committee is particularly concerned that:

(a) The 48-hour time frame of the accelerated procedure may not allow asylum-seekers, in particular, children, undocumented applicants and others made vulnerable to properly substantiate their claims;

(b) The time provided for legal assistance between the issuance of the report from the first interview and the Immigration and Naturalization Service's decision is allegedly only five hours and that an asylum-seeker may not be assisted by the same lawyer throughout the proceedings;

(c) The accelerated procedure requires asylum-seekers to submit supporting documentation that they are "reasonably expected to possess", leaving a wide margin of discretion in relation to the burden of proof

(d) The appeal procedures only provide for a "marginal scrutiny" of rejected applications and that the opportunity to submit additional documentation and information is restricted.

The Committee takes note of the State party's intention to revise the accelerated procedure, notwithstanding which, the State party should consider the following when reviewing the procedure:

(a) Applications from all asylum-seekers, in particular, children, undocumented applicants and others made vulnerable are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. This may require the State party to establish criteria for cases which may or may not be processed under the accelerated or the normal procedure;

(b) All asylum-seekers have access to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings;

(c) The procedures with regard to required supporting documentations for asylum are clarified;

(d) The appeal procedures entail an adequate review of rejected applications and permit asylum-seekers to present facts and documentation which could not be made available, with reasonable diligence, at the time of the first submission.

(8) The Committee notes with concern that medical reports are not taken into account on a regular basis in the Dutch asylum procedures and that the application of the Istanbul protocol is not encouraged.

The State party should reconsider its position on the role of medical investigations and integrate medical reports as part of its asylum procedures. The Committee also encourages the application of the Istanbul Protocol in the asylum procedures and the provision of training regarding this manual to relevant professionals.

Unaccompanied children and young asylum-seekers

(9) While taking into consideration the State party's clarification that unaccompanied children asylum-seekers in the European part of the Kingdom of the Netherlands are placed in detention centres only when there is doubt about their age, the Committee remains concerned at the situation of young asylum-seekers.

The State party should take measures to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention. The State party should pay particular attention to the situation of young asylum-seekers and only use detention as a measure of last resort. The State party should provide adequate housing and education for young returnees awaiting expulsion (CRC/C/15/Add.227, para. 54 (d)).

Pretrial detention

(10) The Committee expresses its concern at the excessive length of pretrial detention and the high number of non-convicted detainees in Aruba and in the Netherlands Antilles.

> **The State party should take appropriate measures to reduce the length of pretrial detention and the number of non-convicted detainees and should consider alternative measures to limit the use of preventive detention.**

Custody and treatment of arrested, detained and imprisoned persons

(11) While acknowledging the effort undertaken to provide suitable facility to house juveniles aged 15 and under and the continuous effort carried out by the State party to improve prison conditions in the Netherlands Antilles, the Committee is concerned at:

(a) The lack of a separate unit for offenders aged between 16 and 18 who are currently held with either adult offenders or prisoners undergoing psychological observation;

(b) The reported lack of educational programmes for juveniles held in prison;

(c) The slow classification process and allocation of cells where prisoners are currently placed regardless of their age, length of sentence or legal status.

> **The State party should take measures:**
>
> **(a) To urgently ensure that juveniles are separated from adult offenders;**
>
> **(b) To provide educational and training programmes to help the social reintegration of juveniles;**
>
> **(c) To undertake prompt action to implement a new classification of inmates and allocation of cells.**

Right to complaint

(12) The Committee is concerned at the State party's indication that information related to sexual abuse or assault in the Aruban prison rarely reaches the prison board and that victims are not likely to lodge complaints for privacy concerns.

> **The State party should put in place specific mechanisms to receive complaints of sexual abuse that will ensure the privacy of victims and protect both victims and witnesses against ill-treatment or intimidation as a consequence of the complaint (art. 13).**

Prompt and impartial investigations

(13) The Committee is concerned at the number of reports of assaults committed by Aruban law enforcement officials. It is also concerned that, as reported by the State party, of the 49 cases, which include complaints of assault and other offences, lodged at the Internal Investigations Bureau between 1 September 2005 and 21 March 2007, only two have been dealt with in court and did not lead to a conviction due to insufficient evidence.

> **The State party should take all appropriate measures to send a clear and unambiguous message to the Police Force and to prison staff that torture, violence and ill-treatment are unacceptable. Similarly, the State party should implement its obligation to investigate promptly, impartially and thoroughly all complaints submitted, so as to ensure that appropriate penalties are imposed on those convicted. The State party should also ensure that effective measures are put in place to guarantee that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports.**

Education on the prohibition against torture

(14) While noting the different training programmes for police and prison officers in the three constituent parts of the Kingdom, which cover human rights and rights of detainees including the prohibition of torture, the Committee regrets that there is no available information on the impact of the training or its efficacy in reducing incidents of torture, violence and ill-treatment.

> **The State party should ensure that through educational programmes, law enforcement personnel and justice officials are fully aware of the provisions of the Convention. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of these training programmes on the incidence of cases of torture, violence and ill-treatment.**

Trafficking

(15) While taking positive note of the recent criminalization of trafficking in human beings in Aruba and the State party's domestic effort to prosecute traffickers, the Committee remains concerned at the practice and lack of information about existing mechanisms to effectively prevent trafficking and prosecute traffickers in Aruba.

> **The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators in accordance with the law, and provide adequate protection and redress to all victims.**

(16) The Committee recommends that, in order to have a clearer view of the situation regarding protection against torture, the State party systematically include in its future reports, data which are disaggregated by age, sex and ethnicity, on:

(a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;

(b) The number of applications accepted;

(c) The number of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and data on asylum granted on grounds of sexual violence;

(d) The number of cases of refoulement or expulsion.

(17) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. The report should also include statistics on pretrial detainees and convicted prisoners, disaggregated by crime, ethnicity, age and sex.

(18) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting under international human rights treaties, recently approved by the Fifth Inter-Committee meeting of the human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(19) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11 and 12 above.

(20) The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, to the media and non-governmental organizations.

(21) The State party is invited to submit its sixth periodic report which should cover all parts of the Kingdom of the Netherlands, in particular more detailed and comprehensive information on the Netherlands Antilles, by 30 June 2011.

44. Poland

(1) The Committee considered the fourth periodic report of Poland, (CAT/C/67/Add.5) at its 769th and 772nd meetings, held on 10 and 11 May 2007 (CAT/C/SR.769 and CAT/C/SR.772), and adopted, at its 776th meeting on 15 May 2007 (CAT/C/SR.776), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the State party's fourth periodic report and the information therein. The Committee expresses its appreciation for the dialogue with the State party's delegation and commends the State party for the detailed responses to the list of issues in written form (CAT/C/POL/Q/4/Rev.1/Add.1), which facilitated the discussion between the delegation and the Committee members.

(3) The Committee expresses its appreciation for the high-level delegation, comprising representatives from several departments of the State party, and the efforts made to provide additional information which facilitated a constructive oral exchange during the consideration of the report.

B. Positive aspects

(4) The Committee notes with satisfaction that in the period since the consideration of the last periodic report, the State party has ratified or acceded to the following international human rights conventions and protocols:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 7 May 2005;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 4 March 2005;

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 22 March 2004;

(d) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, on 14 September 2005;

(e) The Rome Statute of the International Criminal Court, on 1 July 2002;

(f) The United Nations Convention against Transnational Organized Crime, on 29 September 2003;

(g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 25 December 2003; and

(h) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 28 January 2004.

(5) The Committee also notes with appreciation the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) Law of June 2003 Granting Protection to Aliens on the Territory of Poland;

(b) Law of January 2005 on National and Ethnic Minorities and on Regional Languages;

(c) The ongoing National Plan for Combating and Preventing Trafficking in People;

(d) The National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance established in 2003;

(e) The setting up in 2006 of the institution of the Ombudsman for Mental Hospitals Patients; and

(f) The National Programme for Crime Victims set up in February 2006.

C. Principal subjects of concern and recommendations

Definition of torture

(6) The Committee regrets that the State party has not changed its position not to incorporate the Convention into Polish law and it reiterates the concern expressed in its previous conclusions and recommendations (A/55/44, paras. 85-95) with regard to the absence of a specific offence of torture, consistent with articles 1 and 4, paragraph 2, of the Convention (arts. 1 and 4).

> **The Committee, recalling its previous recommendations (A/55/44, paras. 85-95), reiterates its view that the State party should enact a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention.**

Pretrial detention

(7) The Committee expresses its concern at the length of pretrial detention, which under the Code of Criminal Procedure can last up to two years, and at the fact that Polish legislation does not establish a time limit for pretrial detention upon the commencement of the court proceedings (arts. 2 and 11).

> **The State party should adopt appropriate measures to ensure that its pretrial detention policy meets international standards and it is only used as an exceptional measure for a limited period of time. The State party should consider using measures alternative to pretrial detention.**

Fundamental safeguards

(8) The Committee is concerned at restrictions that might be imposed on fundamental legal safeguards for persons detained by the police, particularly on the right of access to a lawyer from the outset of the detention, including during the stages of the preliminary investigation, as well as to consult a lawyer in private (arts. 2 and 11).

> **The State party should take effective measures to ensure that all fundamental legal safeguards for persons detained by the police, particularly the right to access a lawyer and to consult with him/her in private, are respected from the very outset of the detention, including during the stages of the preliminary investigation.**

(9) The Committee notes the adoption of a "shortened trial procedure" as a component of the reform of the Code of Criminal Procedure (art. 387) and it would be concerned if it gave rise to undue pressure being brought to bear on suspects to avail themselves of the procedure (art. 2).

> **The State party should take all necessary measures to guarantee the voluntary nature of any such agreements.**

(10) The Committee regrets the lack of an appropriate system of legal aid in Poland and, in particular, the delay in submitting the draft law on access to free legal aid to the Parliament (Sejm) considering the impact that the delay might have on the protection of persons without resources (art. 2).

> **The State party should take effective steps to expedite the adoption of the law on access to free legal aid in order to ensure appropriate protection and access to the legal system of persons without resources.**

(11) The Committee expresses its concern at thepersistent allegations of the involvement of Poland in extraordinary renditions in the context of the fightagainst international terrorism. On the other hand, the Committee takes note of the statement made by the Polish delegation that Poland has not participated and is not participating in any form whatsoever in extraordinary renditions of persons suspected of acts of terrorism (arts. 2 and 3).

> **The State party should apply the non-rebulement guarantee to all detainees in its custody and take all the necessary measures to avoid and prevent the rendition of suspects to States where they might face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspectshave the possibility to challenge decisions of refoulement.**

Detention of asylum-seekers and other non-citizens

(12) The Committee notes with concern the absence of specific laws concerning the detention of aliens after the deadline for their expulsion and the fact that somehave been detained in transit zones beyond the deadline of their expulsion without a court order (arts. 3 and 11).

> **The State party should take the necessary measures to address this situation and ensure that the detention of aliens in transit zones is notexcessively protracted and that, if the detention were to be extended beyond a few days, the decisionis adopted by a court.**

(13) The Committee also notes with concern theregime and material conditions of detention in transit zones or deportation detention centres where foreign nationals awaiting deportation under the aliens' legislation are held (arts. 3 and 11).

> **The State party should review the regime and material conditions of deportation detention centres, including the size of cells and the regimeof activities of the detainees, in order to ensure that they are in conformity with minimum international standards.**

Treatment and excessive use of force, includingkillings, by law enforcement officials

(14) The Committee is concerned about reportson the excessive use of force by law enforcement officials, with particular reference to the incidents which occurrd during the student holiday in Lódz in May 2004 and the use of penetrating ammunition[8] "by error". The Committee is particularly concerned by the fact that the investigation is still under way as well as by the lack of information on the disciplinary measures imposed on the police officers held responsible and who are currently under investigation (arts. 10 and 12).

> **The State party should:**
>
> **(a) Ensure prompt, impartial ad effective investigations into all complaints or allegations of misconduct, in particular when a persondies or is seriously injured following contact with law enforcement officials. In connection with *prima facie* cases of torture and ill-treatment, the suspect(s) as a rule should be subject to suspensionor reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;**
>
> **(b) Try the alleged perpetrators of acts of abuse and, when convicted, impose appropriate sentences and adequately compensate to victims in order to eliminate the de facto impunity for law enforcement personnel who are responsible for violations prohibited by the Convention;**
>
> **(c) Review and strengthen its education and training programmes relating to the use of force and weapons by law enforcement officials in order to ensure that the use of force is strictly limited to that required to perform their duties.**

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[8] Also known as body armour breaching ammunition.

Training

(15) While the Committee acknowledges the wide range of educational programmes for law enforcement officials, prisons staff, border guards and medical personnel currently in place, the Committee notes with concern the lack of programmes to asses the impact of the trainings conducted and their effectiveness in reducing incidents of torture, violence and ill-treatment (art. 10).

> **The State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.**

Prompt and impartial investigations

(16) The Committee is concerned at allegations regarding the existence in the territory of Poland of secret detention facilities for aliens suspected of terrorist activities. The Committee takes note of the statement of the Polish delegation emphatically refuting all allegations about the existence of secret detention facilities in its territory (arts. 3, 12 and 16).

> **The Committee urges the State party to share information about the scope, methodology and conclusions of the enquiry into these allegations conducted by the Polish Parliament so that this matter can be put to rest.**

Prison conditions

(17) While acknowledging the efforts made by the State party to deal with the problem of overcrowding in prisons, the Committee is concerned about certain temporary measures taken by the State party to address the problem, particularly the use of common areas, such as community centres, fitness rooms, briefing halls, etc. for residential purposes and the impact that such measures might have on the regime and material conditions of detention in the country (art. 11).

> **The State party should take the necessary measures to address the current situation of overcrowding in prisons without compromising the regime and material conditions of detention. The State party should make available the necessary material, human and budgetary resources to ensure that the conditions of detention in the country are in conformity with minimum international standards.**

Trafficking

(18) While acknowledging the efforts made by the State party in combating and preventing trafficking in human beings by adopting new legislation and measures, the Committee is concerned about the absence of a definition of trafficking in human beings in its Penal Code. The Committee also regrets the lack of information on the number of cases brought to court and on the penalties imposed to perpetrators (art. 16).

> **The State party should include in its Penal Code a definition of human trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (CEDAW/C/POL/CO/6).**
>
> **The State party should provide detailed information and statistics on the number of cases brought to court and penalties imposed to perpetrators, where appropriate.**

Hazing in the military

(19) While the Committee acknowledges the progress made by the State party in decreasing the number of cases of abuse of conscripts in the army, it remains concerned at the high number of cases that continue to be reported (arts. 2 and 16).

The State party should eradicate hazing in the armed forces; continue implementing measures of prevention as well as ensure prompt, impartial and effective investigation and prosecution of such abuses; and report publicly on the results of any such prosecutions.

The State party should guarantee the rehabilitation of victims, including appropriate medical and psychological assistance.

Minorities and other vulnerable groups

(20) The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians (art. 16).

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

Data collection

(21) The Committee regrets the fact that for certain areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to data on violence against women, including rape and sexual harassment, and racially motivated crimes, particularly violence against the Roma.

The State party should take such measures as may be necessary to ensure that the competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention.

(22) The Committee commends the State party for its contributions between the years 1999 and 2005 to the United Nations Voluntary Fund for the Victims of Torture, and it encourages the State party to continue its contributions to the Fund.

(23) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

(24) The State party is encouraged to disseminate widely the reports and replies to the lists of issues submitted by Poland to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(25) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently approved by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(26) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 9, 15, 18 and 19 above.

(27) The State party is invited to submit its sixth periodic report by 30 June 2011.

45. Ukraine

(1) The Committee considered the fifth periodic report of Ukraine (CAT/C/81/Add.1) at its 765th and 768th meetings, held on 8 and 9 May 2007 (CAT/C/SR.765 and CAT/C/SR.768), and adopted, at its 779th meeting on 18 May 2007 (CAT/C/SR.779), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the fifth periodic report of Ukraine, which follows the Committee's guidelines fr reporting, and expresses its appreciation for the extensive written response provided to the list of issues (CAT/C/UKR/Q/5/Rev.1/Add.1). The Committee also appreciates the expertise, size and high level of the State party delegation and the extensive dialogue conducted, as well as the additional oral information provided by the representatives of the State party to questions raised and concerns expressed during consideration of the report.

B. Positive aspects

(3) The Committee welcomes the entry into force, on 1 September 2001, of a new Criminal Code, which, inter alia, makes torture a punishable offence, as well as the adoption, in 2004, of a new Penal Corrections Code.

(4) With regard specifically to the prevention of torture, the Committee welcomes the declaration made, in September 2003, under articles 21 and 22 of the Convention, that the State party recognizes the competence of the Committee to receive and consider State and individual communications, as well as the withdrawal of its reservatin to article 20 of the Convention and the ratification of the Optional Protocol to the Convention in September 2006.

(5) The Committee also welcomes the ratification of the following instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in July 2003;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children i armed conflict, in July 2005;

(c) The Convention relating to the Status of Refugees and its 1967 Protocol, in June and April 2002 respectively;

(d) The United Nations Convention against Transnational Organized Crime, in May 2004.

(6) The Committee notes with satisfaction the adoption of a National Plan of Action (2001-2005) to "Improve the Status of Women and Promote Gender Equality in Society" aimed at preventing violence against women and children and trafficking, and the State party's efforts to combat such trafficking.

(7) The Committee welcomes the efforts of the State party to cooperate with non-governmental organizations n human rights issues, and encourages it to further strengthen this trend with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Definition of torture

(8) While noting that the State party amended its Criminal Code in 2005 in order to bring the definition of tortre into conformity with the provisions of the Convention, the Committee regrets that the definition contained in article 127 of the Criminal Code does not fully reflect all elements contained in article 1 of the Convention, notaly with respect to discrimination.

> **The State party should bring its definition of torture fully into conformity with article 1 of the Convention, in particular to ensure that all public officials can be prosecuted under article 127 of th Criminal Code, and that discrimination is an element of the definition.**

Insufficient safeguards governing initial period of detention

(9) The Committee is deeply concerned at allegations of torture and ill-treatment of suspects during detention, as well as reported abuses during the period between apprehension and the formal presentation of a detainee to a judge, thus providing insufficient legal safeguards to detainees. These allegations include:

(a) Detentions taking place without court warrants despite constitutional provisions to the contrary;

(b) Failure to bring detainees promptly before a judge within the prescribed 72-hour period, as well as unnecessarily delaying this for the maximum length of the prescribed period;

(c) Failure to acknowledge and record the actual time of apprehension of a detainee, as well as unrecorded periods of pretrial detention and investigation;

(d) Restricted access to lawyers and independent doctors and failure to notify detainees fully of their rights at the time of detention;

(e) Misuse of so-called administrative detention, for a period of up to 15 days for the purpose of criminal investigation, during which the detainee is deprived of procedural guarantees, including difficulties in appealing against such detention.

> **The State party should promptly implement effective measures to ensure that a person is not subject to de facto unacknowledged detention and that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention. These include, in particular, the right to access a lawyer, an independent medical examination, informing a relative, being informed of their rights at the time of detention, including as to the charges laid against them, as well as being promptly presented to a judge within the maximum 72-hour detention period, calculated from the actual moment of deprivation of liberty, as set out in article 29 of the Constitution.**
>
> **The State party should also ensure, in practice, that the actual time of apprehension is recorded, that suspects in criminal investigations are not deprived of liberty under administrative detention and that all persons detained have the right to appeal against such deprivation of liberty.**

Lack of effective investigation into reports of torture and the role of the General Prosecutor's office

(10) The Committee is concerned by the failure to initiate and conduct prompt, impartial and effective investigations into complaints of torture and ill-treatment, in particular due to the problems posed by the dual nature and responsibilities of the General Prosecutor's office, (a) for prosecution and (b) for oversight of the proper conduct of investigations. The Committee notes the conflict of interest between these two responsibilities, resulting in a lack of independent oversight of cases where the General Prosecutor's office fails to initiate an investigation. Furthermore, there is an absence of data on the work of the General Prosecutor's office, such as statistics on crime investigations, prosecutions and convictions, and the apparent absence of a mechanism for data collection.

> **The State party should pursue efforts to reform the General Prosecutor's office, in order to ensure its independence and impartiality, and separate the function of criminal prosecution from the function of supervision of investigations into allegations of torture and ill-treatment.**
>
> **The State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment during criminal investigations.**
>
> **The State party should ensure that detainees who have complained about allegations of torture are protected from reprisal.**
>
> **The State party should also provide the Committee with disaggregated statistical data on the work of the General Prosecutor's office, including investigations into the numbers of prosecutions and cases in which confessions were obtained, as well as the numbers of convictions and acquittals.**

Evidence obtained by coercion

(11) The Committee is concerned at the current investigation system in which confessions are used as a principal form of evidence for prosecution, thus creating conditions that may encourage the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements which have been made under torture shall not be invoked as evidence in any proceedings, as stipulated in the Convention.

> **The State party should take all appropriate measures to eliminate any adverse effects the current investigation system of promoting confessions may have on the treatment of suspects.**
>
> **The State party should also take the necessary measures to establish that statements which have been made under torture shall not be invoked as evidence in any proceedings, in accordance with the provisions of the Convention.**

Monitoring detention facilities

(12) While the establishment throughout the State party of "mobile groups", composed of representatives of civil society and staff of the Ministry of Interior with the mandate to visit police detention facilities, monitor the situation of detainees and prevent acts of torture, is a positive development, the Committee remains concerned at their dependency on the goodwill of local authorities, their lack of formal status and the lack of adequate resources.

> **The State party should establish a formal status for the "mobile groups", provide them with a strong mandate, guarantee their independence and provide them with adequate resources. The State party should also inform the Committee on the measures it has taken to set up a national preventive mechanism in accordance with the Optional Protocol to the Convention.**

Law enforcement personnel

(13) The Committee is concerned at allegations of acts in breach of the Convention committed by law enforcement personnel, especially with regard to persons detained by the militia and in pretrial detention facilities (SIZO), and at the apparent impunity of the perpetrators. The Committee is also concerned at the reported use of masks by the anti-terrorist unit inside prisons (e.g. in the Izyaslav Correctional Colony, in January 2007), resulting in the intimidation and ill-treatment of inmates.

> **The State party should ensure that all allegations of torture and ill-treatment are promptly, effectively and impartially investigated and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts.**
>
> **The State party should also ensure that the anti-terrorist unit is not used inside prisons so as to prevent the mistreatment and intimidation of inmates.**

Violence against women and children, including trafficking

(14) While noting the measures adopted by the State party to combat trafficking, the Committee remains concerned about the persistence of trafficking in women and children for sexual exploitation. It also notes the extremely low level of cases of domestic violence brought to justice, despite the high reported incidence of domestic violence.

> **The State party should strengthen measures to prevent and combat trafficking and domestic violence, provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate.**
>
> **The State party should create adequate conditions for victims to exercise their right to complain and have each case promptly, impartially and effectively investigated. Perpetrators must be brought to justice and punished with penalties appropriate to the gravity of their acts.**

Violence against members of minorities and others

(15) The Committee expresses concern about incitement and acts of violence against persons belonging to ethnic and national minorities, including acts against Roma, anti-Semitic attacks, and violence against persons of African and Asian origin and non-citizens, as well as with persistent allegations of failure to investigate and reluctance on the part of the police and authorities to provide adequate protection to the victims or to conduct prompt, impartial and effective investigations of such reports.

> **The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including that directed against Roma, Jews, persons of African and Asian origin and non-citizens, and prosecute and punish perpetrators with penalties appropriate to the nature of their acts.**
>
> **The State party should also publicly condemn hate crimes and other violent acts of racial discrimination, xenophobia and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in such violence. It should ensure that officials are held accountable for actions or failures to act which breach the Convention.**
>
> **The State party should give prompt consideration to expanding the recruitment into law enforcement of persons belonging to ethnic and national minorities.**
>
> **The State party should also develop and adopt a comprehensive governmental programme addressing the human rights situation of national minorities, especially the Roma.**

Violence in the armed forces

(16) While welcoming the decrease in the number of cases of hazing in the armed forces (*dedovshchina*) and the measures taken to prevent such phenomena, including the establishment of a "hotline", the Committee remains concerned at the persistence of cases of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, as well as with the lack of investigation of all reported cases.

> **The State party should take effective measures to eradicate the prevalent problem of hazing in the armed forces (*dedovshchina*), reinforce the measures of prevention and ensure prompt, impartial and effective investigation, prosecution and conviction of the perpetrators of such abuses, and report publicly on the results of any such prosecutions.**

Harassment and violence against members of civil society

(17) The Committee expresses its concern at information it has received on harassment and violence against journalists, including murders (e.g. the case of Mr. Georgiy Gongadze), and against human rights defenders, which severely hamper the role of the mass media and freedom of opinion and expression, as well as the monitoring activities of civil society with regard to human rights.

> **The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities, and ensure the prompt, impartial and effective investigation of such acts.**

Penitentiary system

(18) The Committee notes with concern the delay in transferring the Department for the Execution of Punishments to the authority of the Ministry of Justice.

> **The State party should complete the transfer of the Department for the Execution of Punishments to the Ministry of Justice as soon as possible, with the aim of institutionalizing oversight and accountability for executive decisions in the judicial branch of government.**

The State party should also provide the Committee with detailed information on the penitentiary system, including deaths in custody (including suicides), and the results of any investigation into them or prosecutions relating to them, as well as on the medical situation of detainees.

Risk of return to torture

(19) The Committee is concerned by the return of persons by the State party to States where there are substantial grounds for believing that they would be in danger of being subjected to torture, e.g. the recent case of 11 Uzbek nationals who were returned to Uzbekistan.

Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. When determining the applicability of its obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for reviewing the decision are in place, sufficient legal defence is available for each person subject to extradition, and that effective post-return monitoring arrangements are established.

The State party should provide detailed information to the Committee on any cases of extradition, return or removal that have taken place during the reporting period, including on the minimum contents of assurances, if any. In addition, the Committee requests information on measures taken by the State party to remedy any cases where article 3 safeguards have not been given effect.

Asylum-seekers

(20) The Commitee is concerned about the discrimination that asylum-seekers face on grounds of nationality and the absence of proper asylum procedures, leading to the reported refoulement of asylum-seekers without appropriate consideration of their individual cases. It also notes with concern the poor and overcrowded conditions of detention for asylum-seekers.

The State party should adopt the draft laws "On Refugees, Persons Eligible for Complementary and TemporaryProtection" and "On Introduction of Amendments to the Law of Ukraine on the Legal Status of Foreign and Stateless Persons". The State party should also adopt asylum procedures in accordancewith international standards as well as improve detention conditions, including by the use of alternative measures.

Ukrainian Parliament Commissioner for Human Rights

(21) While appreciating the presence of representatives from the Ukrainian Parliament Commissioner for Human Rights during the dialogue with the State party delegation, the Committee regrets the absence of detailed information regarding its compliance with the Paris Principles related to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134) as well as on its independence, activities and results with regard to the Convention.

The State party should ensure that the Ukrainian Parliament Commissioner for Human Rights functions effectively as an independent national human rights institution, in accordance with the Paris Principles, and independently of political activities, as specified in the "Law on the Ukrainian Parliament Commissioner for Human Rights" of 1997.

The State party should provide the Committee with detailed information on the independence, mandate, resources, procedures and effective results of the Ukrainian Parliament Commissioner for Human Rights and ensure that the complaints received by the institution remain confidential so that complainants are not subjected to any reprisals.

Training and education

(22) The Committee regrets the insufficient training regarding the provisions of the Convention for law enforcement personnel, including penitentiary and border control staff, judges, prosecutors and the personnel of the armed forces. The Committee also notes with concern the lack of specific training for medical personnel acting in detention facilities in the detection of signs of torture and ill-treatment.

> **The State party should reinforce its training programmes on the absolute prohibition of torture for all law enforcement and military personnel, as well as for all members of the judiciary and prosecutors on the State party's obligations under the Convention.**
>
> **The State party should also ensure adequate training for all medical personnel involved with detainees, in the detection of signs of torture and ill-treatment in accordance with international standards, as outlined in the Istanbul Protocol.**

Legal aid

(23) The Committee expresses its concern about the difficulties persons or groups experience in their efforts to exercise the right to complain, and to obtain redress and fair and adequate compensation as victims of acts of torture.

> **The State party should provide an effective free legal aid system for persons at risk or belonging to groups made vulnerable. It should provide this system with adequate resources for ensuring that all victims of acts of torture may exercise their rights under the Convention.**

Compensation and rehabilitation

(24) The Committee also expresses its concern at the lack of compensation for victims of torture and other cruel, inhuman or degrading treatment, as well at the absence of appropriate measures for rehabilitation of victims of torture, ill-treatment, trafficking, domestic and other sexual violence.

> **The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are also provided to all victims of torture, ill-treatment, trafficking, domestic and other sexual violence, including medical and psychological assistance.**

Conditions of detention

(25) The Committee is concerned at the poor conditions of detention, such as overcrowding, and at the prevalence of HIV/AIDS and tuberculosis amongst detainees. The detention conditions of pretrial detainees in police custody are inappropriate for long periods and place detainees in a situation of great vulnerability. The Committee also expresses its concern at the absence of alternative measures to pretrial detention.

> **The State party should adopt effective measures to improve conditions in all detention facilities, reduce the current overcrowding and meet the needs of all those deprived of their liberty, in particular regarding health care, in conformity with international standards.**

Data collection

(26) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations prosecutions and convictions of cases of torture and ill-treatment by law enforcement and penitentiary personnel and in the armed forces, as well as on trafficking and domestic and sexual violence.

> **The State party should establish an effective system to compile statistical data relevant to monitoring the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, and domestic, sexual and ethnically motivated violence and discrimination, as well as on compensation and rehabilitation provided to the victims.**

(27) The State party should widely disseminate its report, its replies to the list of issues, and the conclusions and recommendations of the Committee, through official websites and the media, in particular to groups made vulnerable.

(28) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 10, 12, 15, 17 and 19 above.

(29) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document on the harmonized guidelines on reporting, recently recommended by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(30) The State party is invited to submit its next periodic report, which will be the sixth report, by 30 June 2011.

IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In Chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty-eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow-up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow-up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the end of the thirty-eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow-up recommendations. Of the 39 States parties that were due to have submitted their follow-up reports to the Committee by 18 May 2007, 25 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow-up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala, Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she writes to solicit the outstanding information.

54. At its thirty-eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow-up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

56. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

(a) The need for greater precision on the means by which police and other personnel instruct on and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer and family member;

(b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention, because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for such acts; and the importance of the protection of persons employed in such bodies;

(d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice statistics in ways that ensure adequate information as to personnel, agencies, or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse, and in particular information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections; the utility of permitting non-governmental organizations to conduct prison visits; and the utility of precautionary measures to protect investigators and official visitors from harassment or violence impeding their work;

(g) The need for information about specific professional police training programmes, with clear-cut instructions as to the prohibition against torture and practice in identifying the sequellae of torture; and for information about the conduct of medical examinations, including autopsies, by trained medical staff, especially whether they are informed of the need to document signs of torture including sexual violence and to ensure the preservation of evidence of torture;

(h) The need for evaluations and continuing assessments of whether a risk of torture or other ill-treatment results from official counter-terrorism measures;

(i) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, such as the intersection of race and/or ethnicity with ill-treatment and torture, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges, incidents of sexual violence, complaints about abuses within the military, etc.

57. The chart below details, as of 18 May 2007, the end of the Committee's thirty-eighth session, the state of the replies with respect to follow-up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2007

Thirtieth session (May 2003)

State party	Information due in	Information received	Action taken
Azerbaijan	May 2004	7 July 2004 CAT/C/CR/30/RESP/1	Request for further clarification
Cambodia	August 2003	Not received	Reminder
Moldova	August 2003	Not received	Reminder

Thirty-first session (November 2003)

State party	Information due in	Information received	Action taken
Cameroon	November 2004	Not received	Reminder
Colombia	November 2004	13 June 2006 CAT/C/COL/CO/3/Add.1	Request for further clarification
Latvia	November 2004	3 November 2004 CAT/C/CR/31/RESP/1	Request for further clarification
		14 May 2007 CAT/C/LVA/CO/1/Add.2	Response under review
Lithuania	November 2004	7 December 2004 CAT/C/CR/31/RESP/1	Request for further clarification
		25 October 2006 CAT/C/LTU/CO/1/Add.2	Response under review
Morocco	November 2004	22 November 2004 CAT/C/CR/31/2/Add.1	Request for further clarification
		31 July 2006 CAT/C/MAR/CO/3/Add.2	
		27 October 2006 CAT/C/MAR/CO/3/Add.3	Response under review
Yemen	November 2004	22 October 2004 CAT/C/CR/31/4/Add.1	Request for further clarification

Thirty-second session (May 2004)

State party	Information due in	Information received	Action taken
Bulgaria	May 2005	Not received	Reminder
Chile	May 2005	22 January 2007* CAT/C/38/CRP.4	Reminder Response under review
Croatia	May 2005	12 July 2006 CAT/C/HRV/CO/3/Add.1	Reminder Response under review
Czech Republic	May 2005	25 April 2005 CAT/C/HRV/CO/3/Add.1	Request for further clarification
Germany	May 2005	4 August 2005 CAT/C/CR/32/7/RESP/1	Request for further clarification
Monaco	May 2005	6 April 2006 CAT/C/MCO/CO/4/Add.1	Reminder Response under review
New Zealand	May 2005	9 June 2005 CAT/C/CR/32/4/RESP/1	
		19 December 2006 CAT/C/NZL/CO/3/Add.2	Request for further clarification

* Follow-up information received as part of the periodic report.

Thirty-third session (November 2004)

State party	Information due in	Information received	Action taken
Argentina	November 2005	2 February 2006 CAT/C/ARG/CO/4/Add.1	Request for further clarification
Greece	November 2005	14 March 2006 CAT/C/GRC/CO/4/Add.1	Response under review
United Kingdom of Great Britain and Northern Ireland	November 2005	20 April 2006 CAT/C/GBR/CO/4/Add.1	Response under review

Thirty-fourth session (May 2005)

State party	Information due in	Information received	Action taken
Albania	May 2006	15 August 2006 CAT/C/ALB/CO/1/Add.1	Response under review
Bahrain	May 2006	15 December 2006 CAT/C/BHR/CO/1/Add.1	Response under review
Canada	May 2006	7 June 2006 CAT/C/CAN/CO/4/Add.1	Response under review
Finland	May 2006	22 May 2006 CAT/C/FIN/CO/4/Add.1	Response under review
Switzerland	May 2006	15 May 2007 CAT/C/CHE/CO/4/Add.1	Reminder Response under review
Uganda	May 2006	Not received	Reminder

Thirty-fifth session (November 2005)

State party	Information due in	Information received	Action taken
Austria	November 2006	24 November 2006 CAT/C/AUT/CO/3/Add.1	Response under review
Bosnia and Herzegovina	November 2006	Not received*	Reminder
Democratic Republic of the Congo	November 2006	Not received	Reminder
Ecuador	November 2006	20 November 2006 CAT/C/ECU/CO/3/Add.1	Response under review
France	November 2006	15 February 2007 CAT/C/FRA/CO/3/Add.1	Response under review
Nepal	November 2006	Not received**	Reminder
Sri Lanka	November 2006	23 November 2006 CAT/C/LKA/CO/2/Add.1	Response under review

* Information received after the thirty-eighth session: CAT/C/BIH/CO/1/Add.2.

** Information received after the thirty-eighth session: CAT/C/NPL/CO/2/Add.1.

Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
Georgia	May 2007	Not received*	
Guatemala	May 2007	Not received	
Republic of Korea	May 2007	Not received**	
Peru	May 2007	Not received	
Qatar	May 2007	12 December 2006 CAT/C/QAT/CO/1/Add.1	Response under review
Togo	May 2007	Not received	
United States of America	May 2007	Not received***	

* Information received after the thirty-eighth session: CAT/C/GEO/CO/3/Add.1.

** Information received after the thirty-eighth session: CAT/C/KOR/CO/2/Add.1.

*** Information received after the thirty-eighth session: CAT/C/USA/CO/2/Add.1.

Thirty-seventh session (November 2006)

State party	Information due in	Information received	Action taken
Hungary	November 2007	-	
Russian Federation	November 2007	-*	
Mexico	November 2007	-	
Guyana	November 2007	-	
Burundi	November 2007	-	
South Africa	November 2007	-	
Tajikistan	November 2007	-	

* Information received after the thirty-eighth session: CAT/C/RUS/CO/4/Add.1.

Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
Denmark	May 2008	-	
Italy	May 2008	-	
Japan	May 2008	-	
Luxembourg	May 2008	-	
The Netherlands	May 2008	-	
Poland	May 2008	-	
Ukraine	May 2008	-	

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

58. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

59. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

60. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

61. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

62. In the framework of its follow-up activities, the Rapporteur on article 20, continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

63. During the thirty-seventh session, the Committee had before it the fourth periodic report from Mexico, under article 19. The Committee examined the status of its recommendations under article 20 (A/56/44, paras. 144-193).

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. Introduction

64. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-two out of 144 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

65. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's rules of procedure set out the complaints procedure in detail.

66. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

67. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

68. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

69. The Rapporteur for new complaints and interim measures has developed working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence is added to the request, stating that the request is made on the basis of the

information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him when he took his initial decision on interim measures.

70. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies can be dispensed with if the only remedies available to the complainant are without suspensive effect, i.e. remedies that do not automatically stay the execution of an expulsion order, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant, while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on its merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

71. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in many cases, requests for interim measures are lifted by the Special Rapporteur, on the basis of pertinent State party information received that obviates the need for interim measures.

C. Progress of work

72. At the time of adoption of the present report the Committee had registered, since 1989, 316 complaints with respect to 25 countries. Of them, 89 complaints had been discontinued and 55 had been declared inadmissible. The Committee had adopted final decisions on the merits of 142 complaints and found violations of the Convention in 42 of them. Thirty-one complaints were pending consideration.

73. At its thirty-seventh session, the Committee declared inadmissible complaints Nos. 284/2006 (*R.S.A.N. v. Canada*) and 288/2006 (*H.S.T. v. Norway*). Both complaints concerned claims under article 3 of the Convention. The Committee declared them inadmissible, respectively, for non-exhaustion of domestic remedies and for being manifestly unfounded. The text of these decisions is reproduced in annex VII, section B, to the present report.

74. Also at its thirty-seventh session, the Committee adopted Views on complaints Nos. 227/2003 (*A.A.C. v. Sweden*), 251/2004 (*A.A. v. Switzerland*), 259/2004 (*M.N. v. Switzerland*), 262/2005 (*V.L. v. Switzerland*), 265/2005 (*A.H. v. Sweden*), 277/2005 (*N.Z.S. v. Sweden*), 279/2005 (*C.T. and K.M. v. Sweden*), 280/2005 (*Rgeig v. Switzerland*), 282/2005 (*S.P.A. v. Canada*), 286/2006 (*M.R.A. v. Sweden*). The text of these decisions is reproduced in annex VII, section A, to the present report.

75. In its decision on complaint No. 227/2003 (*A.A.C. v. Sweden*), the Committee found that the complainant's expulsion to Bangladesh, where he had allegedly been tortured as a member of an illegal political party, did not amount to a violation of article 3 of the Convention, given that seven years had lapsed since the alleged torture had taken place, that the status of charges against the complainant under the Public Safety Act remained unclear, and that the complainant's own political party was now part of the Government of Bangladesh. Furthermore, the Committee considered that the complainant had not sufficiently substantiated, for purposes of admissibility, that his prompt removal from Sweden, despite mental health problems, violated article 16 of the Convention. In this respect, it considered that the aggravation of an individual's physical or mental health through deportation is generally insufficient to amount to degrading treatment within the meaning of this provision. It also found inadmissible, for lack of substantiation, the complainant's further claim that the restrictive practice used by the Swedish authorities in the granting of a residence permit itself violated articles 3 and 16 of the Convention.

76. Complaints Nos. 251/2004 (*A.A. v. Switzerland*), 259/2004 (*M.N. v. Switzerland*), 265/2005 (*A.H. v. Sweden*), 277/2005 (*N.Z.S. v. Sweden*), and 286/2006 (*M.R.A. v. Sweden*) concerned asylum-seekers who claimed that their expulsion, return or extradition to their countries of origin would constitute a violation of article 3 of the Convention, as they would be at risk of being subjected to torture there. The Committee, after examining the claims and evidence submitted by the complainants as well as the arguments from the two States parties concerned, concluded that such risk had not been established. Accordingly, no breach of article 3 was found in these cases.

77. In its decision on complaint No. 262/2005 (*V.L. v. Switzerland*), the Committee considered that the complainant had established that her expulsion to Belarus would expose her to the risk of being subjected to torture, in violation of article 3 of the Convention. It reached this conclusion in the light of medical evidence corroborating the complainant's allegation that she had been subjected to sexual abuse, including multiple rape, by the police in the recent past, in retaliation for her and her husband's political activities. This abuse was also aimed at intimidating, punishing and humiliating her, and the Belarusian authorities appeared to have failed to investigate, prosecute and punish the police for such acts. In this context, the Committee stressed that the sexual abuse by the police amounted to torture, even though it had been perpetrated outside formal detention facilities. The Committee noted that the Belarusian authorities' failure to act increased the risk of ill-treatment after the complainant's return to Belarus, since the perpetrators of the rape had not been investigated, let alone prosecuted, and could mistreat the complainant again with impunity. There was, therefore, substantial doubt, based on the particular facts of the case, as to whether the authorities of Belarus would take the necessary measures to protect the complainant from further harm.

78. Complaint No. 279/2005 (*C.T. and K.M. v. Sweden*) concerned a Rwandan citizen of Hutu origin claiming that her expulsion to Rwanda would expose her and her son to the risk of torture, in violation of article 3 of the Convention. The Committee noted her description of the treatment

she had been subjected to while in detention because of her affiliation with the banned PDR-Ubuyanja political party, which included repeated rape under the threat of execution, as a result of which she became pregnant. The Committee also considered that information provided by the complainant demonstrated that ethnic tensions in Rwanda continue to exist, thus increasing the likelihood that the complainant might be subjected to torture upon return to Rwanda. For these reasons, the Committee concluded that substantial grounds existed for believing that the complainant and her son would be at risk of torture if returned to Rwanda.

79. In the views on complaint 280/2005 (*Rgeig v. Switzerland*), the Committee considered that the State party had not presented sufficiently convincing arguments to demonstrate the absence of any risk that the complainant would be exposed to torture if he were to be returned to the Libyan Arab Jamahiriya. In reaching this conclusion, the Committee took into account the findings in the medical report on the presence of serious after-effects of the acts of torture inflicted on the complainant in the past, his political activities subsequent to his departure from the Libyan Arab Jamahiriya, and the persistent reports concerning the treatment generally meted out to such activists if forcibly returned to the Libyan Arab Jamahiriya.

80. In complaint No. 282/2005 (*S.P.A. v. Canada*) the complainant claimed that she would be imprisoned, tortured or killed if returned to Iran, in violation of articles 3 and 16 of the Convention, since she was a known opponent to the Iranian regime, and that a court summons in her name existed. The Committee, after examining the claims and evidence submitted by the complainant as well as the arguments of the State party, concluded that she had not advanced satisfactory evidence or details relating to her custody in the basement of a detention facility in Iran or escape from detention. Further, she had failed to provide plausible explanations for her failure or inability to provide certain details regarding her stay for over three months in Iran subsequent to her escape and the names of those who helped her to escape. Finally, the Committee considered that she failed to provide plausible explanations for her subsequent journey through seven countries, before claiming refugee status in Canada. Whilst noting with concern reports of human rights violations in Iran, the Committee considered that the complainant had not substantiated that she would personally face such a real and imminent risk of being subjected to torture upon return to Iran. Accordingly, no breach of article 3 was found.

81. At its thirty-eighth session, the Committee adopted decisions on the merits in respect of complaints Nos. 249/2004 (*Dar v. Norway*), 268/2005 (*A.A. v. Switzerland*), 270 and 271/2005 (*E.R.K. and Y.K. v. Sweden*), 281/2005 (*Pelit v. Azerbaijan*), 296/2006 (*E.V.I. v. Sweden*), 298/2006 (*C.A.R.M. et al. v. Canada*) and 300/2006 (*Tebourski v. France*). The text of these decisions is also reproduced in annex VII, section A, to the present report.

82. In complaints Nos. 268/2005 (*A.A. v. Switzerland*), 296/2006 (*E.V.I. v. Sweden*), and 270 and 271/2005 (*E.R.K. and Y.K. v. Sweden*) the complainants claimed violations of article 3 of the Convention by the respective States, should they be returned to their countries after being refused asylum. The Committee held, however, that the complainants had not demonstrated the existence of substantial grounds for believing that their return to their countries of origin would expose them to a foreseeable, real and personal risk of torture, and, therefore, no violations of the Convention were found.

83. Complaint No. 249/2004 (*Dar v. Norway*) concerned an Ahmadiya retired army officer accused of blasphemy in Pakistan. The complainant, who sought asylum in Norway, was deported to Pakistan although the Committee had requested the State party not to deport him

while the case was under consideration by the Committee. The complainant was later allowed to return to Norway. The Committee found that the author's deportation to Pakistan despite a standing request for interim measures constituted a breach of article 22 of the Convention. However, it considered that by facilitating his return to Norway and granting him a three-year residence permit, the State party had remedied this breach. In view of the fact that the complainant, who was not tortured during his stay in Pakistan, had returned to the State party, where he received a residence permit for three years, the Committee considered that the issue as to whether his deportation to Pakistan constituted a violation of article 3 was moot.

84. In its decision on complaint No. 281/2005 (*Pelit v. Azerbaijan*), the Committee concluded that the expulsion of the complainant (a Turkish national of Kurdish origin, who was officially recognized as a refugee by Germany) to Turkey, constituted a violation of her rights under both articles 3 and 22 of the Convention. Upon registering the case, the Committee had requested the State party not to extradite the complainant while her case was under consideration by the Committee. The State party initially agreed not to do so, but subsequently deported her, after having received diplomatic assurances from Turkey to the effect that she would not be subjected to any form of ill-treatment. The State party affirmed that a post-expulsion monitoring mechanism had been established and that the complainant was not ill-treated after her return. The Committee expressed its concern about the situation and reiterated that once a State party makes the declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion has rendered null the effective exercise of her right to complain. On the issue of the diplomatic assurances, and with reference to its decision in the case of *Agiza v. Sweden* (communication No. 233/2003), the Committee noted that although some form of a post-expulsion monitoring had indeed taken place, the State party had not provided any document, nor had it given sufficient details, to allow the Committee to evaluate whether these assurances were sufficient to safeguard the complainant's rights.

85. In its decision on complaint No. 298/2006 (*C.A.R.M. and others v. Canada*), the Committee found that the complainants' expulsion to Mexico, where C.A.R.M. and his family had allegedly been persecuted by the mayor of his home town in connivance with a drug cartel, did not amount to a violation of article 3 of the Convention. The Committee considered that the complainants had not sufficiently substantiated the claim that their removal to Mexico would cause them irreparable harm, noting that they had never complained about their alleged persecution in that country and had not sought refuge in another region of Mexico, nor requested protection from the Mexican authorities before seeking asylum in Canada.

86. In complaint No. 300/2006 (*Tebourski v. France*), the complainant was a Franco-Tunisian national residing in France, who had been convicted on terrorist-related charges and was considered by the authorities to be a danger to the public. As a result, after his release from prison, his French citizenship was revoked and his deportation was ordered by the French authorities. The complainant claimed that his deportation would amount to a violation of article 3 of the Convention by France, as he would be at risk of torture in Tunisia. After examining the arguments and evidence submitted to it, the Committee concluded that substantial grounds existed for believing that the complainant would be at risk of torture, and that his deportation would amount to a violation of the Convention. The Committee regretted that, despite the Committee's request not to deport the author, the State party had deported him to Tunisia before the Committee could decide on the case. As a result, the Committee also found a violation of article 22 of the Convention.

87. Also at its thirty-eighth session, the Committee decided to declare inadmissible complaint No. 305/2006 (*A.R.A. v. Sweden*), which concerned claims under article 3 of the Convention. The Committee noted that the complainant had filed an application with the European Court of Human Rights, which was still pending before the Court when the complainant submitted an identical complaint to the Committee. It recalled that, under article 22, paragraph 5 (a) of the Convention, the Committee shall not consider any communications from an individual unless it has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee considered that a communication has been, and is being examined by another procedure of international investigation or settlement, if such examination relates to the "same matter", which must be understood as relating to the same parties, the same facts and the same substantive rights alleged to have been violated. In the case at issue, the application before the European Court was submitted by the same complainant, was based on the same facts and related to the same substantive rights as those invoked in the communication before the Committee. Accordingly, it concluded that the communication was inadmissible. The text of this decision is reproduced in annex VII, section B, to the present report.

Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

State party	**AUSTRIA**
Case	Halimi-Nedibi Quani, 8/1991
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12.
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	None
State party response	None
Complainant's response	N/A

State party	**AUSTRALIA**
Case	Shek Elmi, 120/1998
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999 the State party responded to the Committee's views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999. On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal

	Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.
Author's response	N/A
Committee's decision	In light of the complainant's voluntary departure no further action was requested under follow-up.
State party	**AZERBAIJAN**
Case	Pelit, 281/2005
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted).[7]
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	Not yet due (not yet implemented).
State party	**CANADA**
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan

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[7] The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Case	Falcon Rios, 133/1999
Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken

	into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.
Complainant's response	On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.
Case	Dadar, 258/2004
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Yes and State party acceded
Remedy recommended	The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	26 February 2006
Date of reply	Latest reply 5 April 2007 (Had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006).

State party response

The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response see annual report A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil

	and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.
Complainant's response	The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran. The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.
Action taken	See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to the State party.
Committee's decision	During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.
State party	**FRANCE**
Case	Arana, 63/1997
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999

Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion.[8]
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional". In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain. Also on 18 January 2001,

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[8] No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

	the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities. However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.
Committee's decision	Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.
Case	Brada, 195/2003
Nationality and country of removal if applicable	Algerian to Algeria
Views adopted on	17 May 2005
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party[9]
Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
Due date for State party response	None

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[9] "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
Case	Tebourski, 300/2006
Nationality and country of removal if applicable	Tunisia
Views adopted on	1 May 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party[10]

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[10] The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	13 August 2007 (not yet due)
State party	**THE NETHERLANDS**
Case	Ali Jeljeli, 91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	None
State party response	No information provided
Complainant's response	N/A
State party	**NORWAY**
Case	Dar, 249/2004
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	11 May 2007
Issues and violations found	Removal - article 22

Interim measures granted and State party response	Requested but not acceded to by the State party[11]
Remedy recommended	None - State party has already remedied the breach.
Due date for State party response	Not yet due (not yet implemented)
State party	**SENEGAL**
Case	Suleymane Guengueng and others, 181/2001
Nationality and country of removal if applicable	N/A
Views adopted on	17 May 2006
Issues and violations found	Failure to prosecute - articles 5, paragraph 2, and 7.
Interim measures granted and State party response	N/A
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

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[11] "The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention. However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for 3 years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention."

Due date for State party response	16 August 2006
Date of reply	8 March 2007 (had previously responded on 18 August and 28 September 2006).
State party response	On 18 August 2006, the State party denied that it had violated the Convention, and reiterated its arguments on the merits, including its argument on article 5 that under the Convention a State party is not obliged to meet its obligations within a particular time. The extradition request was dealt with under national law applicable between the State party and States with which it does not have an extradition treaty. It stated that any other way of handling this case would have violated national law. The integration of article 5 into domestic law is in its final stage and the relevant text would be examined by the Legislative Authority. To avoid possible impunity, the State party submitted that it had deferred the case to the African Union for consideration, thus avoiding a violation of article 7. As the African Union had not yet considered the case at that point, it would be impossible to provide the complainants with compensation. On 28 September 2006, the State party informed the Committee that the Committee of Eminent Jurists of the African Union had taken the decision to entrust Senegal with the task of trying Mr. Habré of the charges against him. It stated that its judicial authorities were looking into the judicial feasibility and the necessary elements of a contract to be signed between the State party and the African Union on logistics and finance. On 7 March 2007, the State party provided the following update. It submitted that on 9 November 2006, the Council of Ministers had adopted two new laws relating to the recognition of genocide, war crimes, and crimes against humanity as well as universal jurisdiction and judicial cooperation. The adoption of these laws fills the legal gap which had prevented the State party from recognizing the Habré case. On 23 November 2006, a working group was set up to consider the necessary measures to be taken to try Mr. Habré in a fair manner. This working group has considered the following: texts of the

National Assembly on legal changes to remove obstacles highlighted during the consideration of the request for extradition on 20 September 2005; a framework for the infrastructural, legislative and administrative changes necessary to conform with the African Union's request for a fair trial; measures to be taken in the diplomatic sphere to ensure cooperation between all of the countries concerned as well as other States and the African Union; security issues; and financial support. These elements were included in a report to the African Union during its eighth session which was held between 29 and 30 January 2007. The report underlined the necessity to mobilize financial resources from the international community.

Complainant's response

On 9 October 2006, the complainants commented on the State party's submission of 18 August 2006. They stated that the State party had provided no information on what action it intends to take to implement the Committee's decision. Even three months after the African Union's decision that Senegal should try Mr. Habré, the State party had still failed to clarify how it intends to implement the decision.

On 24 April 2007, the complainants responded to the State party's submission of 7 March 2007. They thanked the Committee for its decision and for the follow-up procedure which they are convinced play an important role in the State party's efforts to implement the decision. They greeted the judicial amendments referred to by the State party, which had prevented it from recognizing the Habré affaire.

While recognizing the efforts made to date by the State party, the complainants highlighted the fact that the decision has not yet been fully implemented and that this case has not yet been submitted to the competent authorities. They also highlighted the following points:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.

2. Given that the State party has an obligation to proceed with the trial or extradite Mr. Habré, the same should not be conditional upon the receipt by the State party of financial assistance. The complainants assume that this request is made to ensure that a trial is carried out in the best possible conditions.

3. Irrespective of what the African Union has decided with respect to this affair, it can have no implications as to the State party's obligation to recognize this affair and to submit it to the competent jurisdiction.

State party	**SERBIA AND MONTENEGRO**
Case	Ristic, 113/1998
Nationality and country of removal if applicable	Yugoslav
Views adopted on	11 May 2001
Issues and violations found	Failure to investigate allegations of torture by police - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to carry out such investigations without delay. An appropriate remedy.
Due date for State party response	6 January 1999
Date of reply	Latest note verbale 28 July 2006 (had replied on 5 August 2005 - See the annual report of the Committee, A/61/44).
State party response	The Committee will recall that by note verbale of 5 August 2005, the State party confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court, this decision was neither effective nor enforceable at that stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a

	thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death. On 28 July 2006, the State party informed the Committee that the District Court of Belgrade had dismissed the complaint filed by the Republic of Serbia and the State Union of Serbia and Montenegro in May 2005. On 8 February 2006, the Supreme Court of Serbia dismissed as unfounded the revised statement of the State Union of Serbia and Montenegro, ruling that it is bound to meet its obligations under the Convention. It was also held responsible for the failure to launch a prompt, impartial and full investigation into the death of Milan Ristic.
Complainant's response	On 25 March 2005, the Committee received information from the Humanitarian Law Center in Belgrade to the effect that the First Municipal Court in Belgrade had ordered the State party to pay compensation of 1,000,000 dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death in compliance with the decision of the Committee against Torture.
Case	Hajrizi Dzemajl et al., 161/2000
Nationality and country of removal if applicable	Yugoslav
Views adopted on	21 November 2002
Issues and violations found	Burning and destruction of houses, failure to investigate and failure to provide compensation - articles 16, paragraph 1, 12 and 13[12]

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[12] Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that

Interim measures granted and State party response	None
Remedy recommended	Urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation.
Due date for State party response	None
Date of reply	See CAT/C/32/FU/1
State party response	See first follow-up report (CAT/C/32/FU/1). Following the thirty-third session and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the State party should be reminded of its obligation to conduct a proper investigation into the case.
Complainant's response	None
Case	Dimitrov, 171/2000
Nationality and country of removal if applicable	Yugoslav
Views adopted on	3 May 2005
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with 1, 12, 13 and 14
Interim measures granted and State party response	N/A

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flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

Remedy recommended	**The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant.**
Due date for State party response	**18 August 2005**
Date of reply	**None**
State party response	**None**
Complainant's response	**N/A**
Case	**Dimitrijevic, 172/2000**
Nationality and country of removal if applicable	**Serbian**
Views adopted on	**16 November 2005**
Issues and violations found	**Torture and failure to investigate - articles 1, 2, paragraphs 1, 12, 13, and 14**
Interim measures granted and State party response	**N/A**
Remedy recommended	**The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.**
Due date for State party response	**26 February 2006**
Date of reply	**None**
State party response	**None**
Complainant's response	**N/A**
Case	**Nikolic, 174/2000**
Nationality and country of removal if applicable	**N/A**
Views adopted on	**24 November 2005**

Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	N/A
Remedy recommended	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
Due date for State party response	27 February 2006
Date of reply	None
State party response	None
Complainant's response	N/A
Case	Dimitrijevic, Dragan, 207/2002
Nationality and country of removal if applicable	Serbian
Views adopted on	24 November 2004
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with articles 1, 12, 13, and 14.
Interim measures granted and State party response	None
Remedy recommended	To conduct a proper investigation into the facts alleged by the complainant.
Due date for State party response	February 2005
Date of reply	None
State party response	None
Complainant's response	On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.

State party	**SPAIN**
Case	Encarnación Blanco Abad, 59/1996.
Nationality and country of removal if applicable	Spanish
Views adopted on	14 May 1998
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	No information provided
Complainant's response	N/A
Case	Urra Guridi, 212/2002
Nationality and country of removal if applicable	Spanish
Views adopted on	17 May 2005
Issues and violations found	Failure to prevent and punish torture, and provide a remedy - articles 2, 4 and 14.
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to ensure in practice that those individuals responsible of acts of torture be appropriately punished, to ensure the Complainant full redress.
Due date for State party response	18 August 2005
Date of reply	None
State party response	No information provided
Complainant's response	N/A

State party	**SWEDEN**
Case	Tapia Páez, 39/1996
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	28 April 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Páez to Peru.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 23 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Kisoki, 41/1996
Nationality and country of removal if applicable	Democratic Republic of the Congo citizen to Democratic Republic of the Congo.
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to Democratic Republic of the Congo.

Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 7 November 1996.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Tala, 43/1996
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	15 November 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	Avedes Hamayak Korban, 88/1997
Nationality and country of removal if applicable	Iraqi to Iraq
Views adopted on	16 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Ali Falakaflaki, 89/1997
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	8 May 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran.

Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 17 July 1998.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Orhan Ayas, 97/1997
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 8 July 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	Halil Haydin, 101/1997
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	20 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 19 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	A.S., 149/1999
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	24 November 2000
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a real risk of being expelled or returned to Iran.

Due date for State party response	None
Date of reply	22 February 2001
State party response	The State party informed the Committee that on 30 January 2001, the Aliens Appeals Board examined a new application for residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the complainant's son a permanent residence permit.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Chedli Ben Ahmed Karoui, 185/2001
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	8 May 2002
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	None
Due date for State party response	None
Date of reply	23 August 2005
State party response	No further consideration under follow-up procedure. See first follow-up report (CAT/C/32/FU/1) in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.
Complainant's response	None

Committee's decision	**No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**
Case	**Tharina, 226/2003**
Nationality and country of removal if applicable	**Bangladeshi to Bangladesh**
Views adopted on	**6 May 2005**
Issues and violations found	**Removal - article 3**
Interim measures granted and State party response	**Granted and acceded to by the State party**
Remedy recommended	**Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days, from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.**
Due date for State party response	**15 August 2005**
Date of reply	**17 August 2005 (was not received by OHCHR, so re-sent by the State party on 29 June 2006).**
State party response	**On 20 June 2005, the Board decided to revoke the expulsion decision regarding the complainant and her daughter and to grant them residence permits.**
Complainant's response	**None**
Committee's decision	**No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**
Case	**Agiza, 233/2003**
Nationality and country of removal if applicable	**Egyptian to Egypt**
Views adopted on	**20 May 2005**

Issues and violations found	Removal - articles 3 (substantive and procedural violations) on two counts and 22 on two counts.[13]
Interim measures granted and State party response	None
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	20 August 2005

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[13] (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints' jurisdiction of the Committee. That jurisdiction included the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

(2) Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

Date of reply	Latest information 1 September 2006 (it had provided a response on 18 August 2005 - annual report of the Committee, A/61/44).
State party's response	The Committee will recall the State party's submission on follow-up in which it referred inter alia to the enactment of a new Aliens Act and the continual monitoring of the complainant by staff from the Swedish Embassy in Cairo. See annual report of the Committee (A/61/44) for a full account of its submission.

On 1 September 2006, the State party provided an update on its monitoring of the complainant. It stated that since its last update, embassy staff had made seven further visits to see Mr. Agiza, the last one on 7 August 2006. Mr. Agiza has been in consistently good spirits and is receiving regular visits in prison from his mother, sometimes together with his brother. He receives regular visits to hospital and his former problems with his back and knee have improved. His spinal cord was X-rayed in February and is said to be satisfactory. His health is said to be stable and he visits Manial Hospital once a week for physiotherapy treatment.

The Egyptian National Council for Human Rights (NCHR) visited Mr. Agiza for the second time. The Embassy has not yet received its reports. In this context, he complained about his transport to and from the hospital, which he said was uncomfortable and tiring, particularly during the summer months. He said that he had sent a letter complaining about it to the NCHR. A doctor from the NCHR also visited Mr. Agiza. Mr. Agiza said that there was nothing to complain about since his last visit. However, he claimed that he had been threatened by a security guard that he would be shot if he tried to escape during his trips to the hospital. His mother has also repeatedly complained in letters to the Ministry of the Interior and the security service about his health. The State party notes that there are substantial discrepancies between the picture presented by Mr. Agiza to the Swedish Embassy and that given by his mother. The Egyptian security service denies the assertions that he was threatened. The Embassy's staff has visited him now on 39 occasions and will continue the visits.

Complainant's response

On 31 October 2006, the complainant's counsel responded to the State party's submission. He stated that he had had a meeting with the Swedish Ambassador on 24 January 2006. During this meeting, counsel emphasized that it was essential that the embassy continue their visits as regularly as it has been doing. According to information available to counsel, the post-surgery treatment for his back has been inadequate and his recovery unsatisfactory. The Embassy promised to continue to emphasize the importance of necessary medical care within the diplomatic framework. However, it was reluctant to make a request to the Egyptian Government for telephone contact between Mr. Agiza and his wife and children who remain in Sweden as refugees. The Ambassador was unclear as to whether he would request the complainant's retrial. Counsel provided arguments as to why his trial in April 2004 was unfair and also requested that the prohibition on the complainant returning to Sweden be lifted, in the event that he is released from prison at some stage in the future. According to the Ambassador, this is up to the Migration Board. Counsel requested the State party to consider having a retrial in Sweden or to allow him to complete his imprisonment there (as suggested by the Special Rapporteur on Torture) but the State party responded that no such steps are possible. In addition, requests for compensation ex gratia have been refused and it was suggested that a formal claim should be lodged under the Compensation Act. This has been done.

According to counsel, although the monitoring aspect of the State party's efforts is satisfactory its efforts as a whole are said to be inadequate with respect to the request for contact with his family in Sweden, a retrial etc.

Case	279/2005, C.T. and K.M.
Nationality and country of removal if applicable	Rwandan, Rwanda
Views adopted on	17 November 2006
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	1 March 2007
Date of reply	19 February 2007
State party response	On 29 January 2007, the Migration Board decided to grant the complainants permanent residence permits. They were also granted refugee status and travel documents.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
State party	**SWITZERLAND**
Case	Mutombo, 13/1993
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005

State party response	**Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.**
Complainant's response	**None**
Committee's decision	**No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**
Case	**Alan, 21/1995**
Nationality and country of removal if applicable	**Turkish to Turkey**
Views adopted on	**8 May 1996**
Issues and violations found	**Removal - article 3**
Interim measures granted and State party response	**Granted and acceded to by the State party**
Remedy recommended	**The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.**
Due date for State party response	**None**
Date of reply	**25 May 2005**
State party response	**Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.**
Complainant's response	**None**
Committee's decision	**No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**

Case	Aemei, 34/1995
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.
Complainant's response	None

Committee's decision	**No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**
Case	**262/2005, Losizkaja**
Nationality and country of removal if applicable	**Belarusian to Belarus**
Views adopted on	**20 November 2006**
Issues and violations found	**Removal - article 3**
Interim measures granted and State party response	**Granted and acceded to by the State party**
Remedy recommended	**The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.**
Due date for State party response	**27 February 2007**
Date of reply	**23 March 2007**
State party response	**The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.**
Committee's decision	**No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.**
Case	**280/2005, El Rgeig**
Nationality and country of removal if applicable	**Libyan, Libyan Arab Jamahiriya**
Views adopted on	**15 November 2006**
Issues and violations found	**Removal - article 3**

Interim measures granted and State party response	**Granted and acceded to by the State party**
Remedy recommended	**The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.**
Due date for State party response	**26 February 2007**
Date of reply	**19 January 2007**
State party response	**On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.**
Committee's decision	**No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.**
State party	**TUNISIA**
Case	**M'Barek, 60/1996**
Nationality and country of removal if applicable	**Tunisian**
Views adopted on	**10 November 2004**
Issues and violations found	**Failure to investigate - articles 12 and 13.**
Interim measures granted and State party response	**None**
Remedy recommended	**The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.**
Due date for State party response	**22 February 2000**
Date of reply	**15 April 2002**

State party response	See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Complainant's response	None
Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005.
Case	Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001
Nationality and country of removal if applicable	Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13.
Interim measures granted and State party response	None
Remedy recommended	To conduct an investigation into the complainants' allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.
Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006
State party response	See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below. On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous

arguments and submitted that the withdrawal of the complaint corroborated its arguments that the complaint was an abuse of process, that the complainants failed to exhaust domestic remedies, and that the motives of the NGO representing the complainants were not bona fide.

Complainant's response

One of the complainants (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland.

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing their surprise that the complainant had "withdrawn" his complaint without providing any reasons for doing so. They did not exclude pressure from the Tunisian authorities as a reason for doing so. They insisted that their own complaints were legitimate and encouraged the Committee to pursue their cases under the follow-up procedure.

On 12 December 2006, and having received a copy of the complainant's letter of "withdrawal" from the other complainants, the complainant's representative responded to the complainant's letter of 31 May 2005. The complainant's representative expressed its astonishment at the alleged withdrawal which it puts down to pressure on the complainant and his family and threats from the State party's authorities. This is clear from the manner in which the complaint is withdrawn. This withdrawal does not detract from the facts of the case nor does it free those who tortured the complainant from liability. It regrets the withdrawal and encourages the Committee to continue to consider this case under follow-up.

Consultations with State party

On 25 November 2005, the Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special Rapporteur explained that each case would have to be implemented separately and that the Committee had requested that investigations be carried out. The Ambassador asked why the Committee had thought it appropriate to consider the merits when the State party was of the view that domestic remedies had not been exhausted. The Special Rapporteur explained that the Committee had thought the measures referred to by the State party were ineffective, underlined by the fact that there had been no investigations in any of these cases in over 10 years since the allegations.

The Ambassador confirmed that he would convey the Committee's concerns and request for investigations, in case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

State party	**Bolivarian Republic of VENEZUELA**
Case	**Chipana, 110/1998**
Nationality and country of removal if applicable	**Peruvian to Peru**
Views adopted on	**10 November 1998**
Issues and violations found	**Complainant's extradition to Peru constituted a violation of article 3.**

Interim measures granted and State party response	Granted but not acceded to by the State party[14]
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	Most recent reply dated 9 November 2005
State party response	On 13 June 2001 (as reflected in the progress report during the thirty-fourth session), the State party had reported on the conditions of detention of the complainant in the prison of Chorrillos, Lima. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru, together with some representatives of the Peruvian administration, visited the complainant in prison. The team interviewed the complainant for 50 minutes, and she informed them that she had not been subjected to any physical or psychological mistreatment. The team observed that the prisoner appeared to be in good health. She had been transferred in September 2000 from the top security pavilion to the "medium special security" pavilion, where she had other privileges such as one hour of visits per week, two hours per day in the courtyard and access to working and educational activities. By note verbale dated 18 October 2001, the State party forwarded a second report made by the Defensor del Pueblo (Ombudsman) dated 27 August 2001 about the complainant's conditions of detention. It included a report of a visit to the complainant in prison carried out on

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[14] The Committee stated "Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

14 June 2001 by a member of the Venezuelan Embassy in Peru together with the head of Criminal and Penitentiary Affairs in Peru. She stated that her conditions of detention had improved and that she could see her family more often. However, she informed them both of her intention to appeal her sentence. According to the Ombudsman, the complainant had been transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Furthermore, since 4 December 2000, all the top security prisons in the country have a new regime consisting of (a) visits: removal of booths. Any visit from any family member or friend will be accepted with no restrictions; (b) media: complainant has access to any media without restriction; (c) lawyers: free visits without restrictions four times a week; (d) courtyard: freedom of circulation until 2200 hours. He concluded that the complainant has more flexible conditions of detention due to her personal situation and to the changes introduced on 4 December 2000. Moreover, her health is good, except that she is suffering from depression. She had not been subjected to any physical or psychological mistreatment, she has weekly visits from her family and she is involved in professional and educational activities in the prison.

On 9 December 2005, the State party informed the Committee that on 23 November 2005, the Venezuelan Ambassador in Peru contacted Mrs. Nuñez Chipana in the maximum security prison for women in Chorrillos, Lima. According to the note, Venezuelan authorities have been lobbying to prevent the complainant from being sentenced to the death penalty, life imprisonment or more than 30 years' imprisonment, or subjected to torture or mistreatment. In the interview held with the complainant, she regretted that the Peruvian authorities of Chorrillos had denied access to her brother, who had come from Venezuela to visit her. She mentioned that she is receiving medical treatment and that she can receive visits from her son, and that she is under a penitentiary regime which imposes minimum restrictions on detainees. She added that she received visits every six months from members of the Venezuelan Embassy in Peru. The State party pointed out that the situation in Peru has changed since the Committee adopted its decision. There is no longer a pattern of widespread torture, and the Government is engaged in redressing the human rights abuses of the past regime. The complainant has been visited on a regular basis and she has not been subjected to torture or any other ill-treatment. The State party considers that its commitment to ensure, through monitoring, that the complainant is not subjected to treatment or punishment contrary to the Convention, has been met.

The Government also considers that it has complied with the recommendation that similar violations should be avoided in the future. It informed the Committee that since the adoption of the law on refugees in 2001, the newly established National Commission for Refugees has been duly processing all the applications of asylum-seekers as well as examining cases of deportation.

The Government asks the Committee to declare that the former has complied with the Committee's recommendations, and to release the Government from the duty to monitor the situation of the deportee in Peru.

Complainant's response	None

Complaints in which the Committee has found no violations of the Convention up to the thirty-eighth session but in which it requested follow-up information

State party	**GERMANY**
Case	M.A.K., 214/2002
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.

Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Complainant's response	None
Committee's decision	No further action is required

VII. FUTURE MEETINGS OF THE COMMITTEE

88. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2008-2009. Those dates are:

Fortieth	26 April-16 May 2008
Forty-first	3-21 November 2008
Forty-second	4-22 May 2009
Forty-third	9-27 November 2009

89. Since 1995 the Committee has received 203 reports, an average of 16 reports per year. In this same period the Committee has considered an average of 13 reports per year, a total of 163 reports. This means that at 18 May 2007, the last day of the thirty-eighth session, there were 26 reports awaiting consideration. In 1995, 88 countries were party to the Convention against Torture. In 2007 there are 144 States parties thus constituting a 64 per cent increase. During this time there has been no increase in the plenary meeting time allocated to the Committee.

90. There are two interlinked issues that need to be considered. One is the importance of providing the Committee with sufficient meeting time for it to undertake its work in an efficient manner, and the second is to facilitate the consideration of the backlog of over 25 reports awaiting review.

91. Insofar as the first issue is concerned, dealing with the incoming workload can be addressed by the Committee meeting for two three-week sessions per year, thereby enabling the Committee to deal with 16 reports per year or approximately the number received each year.

92. The second issue raises the important requirement of addressing the current backlog of 30 reports pending before the Committee. This represents a backlog of two years, meaning that a report submitted to the Committee in June 2007 would not be considered before November 2009. The Committee considers that it could deal with the backlog were it authorized to meet on an exceptional basis for three sessions per year during the biennium 2008-2009. The third (exceptional) session in each of the years 2008 and 2009 would be dedicated exclusively to the consideration of States parties' reports. The Committee would be able to consider 10 reports per exceptional session.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

93. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 780th meeting, held on 18 May 2007, the Committee considered and unanimously adopted the report on its activities at the thirty-seventh and thirty-eighth sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 18 MAY 2007

Participant	Signature	Ratification, Accession (a), Succession (b)
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[1]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006[a]
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[2]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988

Participant	Signature	Ratification, Accession (a), Succession (b)
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996

Participant	Signature	Ratification, Accession (a), Succession (b)
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005[a]
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius	18 March 1985	9 December 1992[a]
Mexico		23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Montenegro		23 October 2006[b]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]

Participant	Signature	Ratification, Accession (a), Succession (b)
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005[a]
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	27 November 2006[a]
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001[b]
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986

Participant	Signature	Ratification, Accession (a), Succession (b)
Syrian Arab Republic		19 August 2004[a]
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes

[1] Accession (75 countries).

[2] Succession (7 countries).

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 18 MAY 2007

Afghanistan

China

Cuba

Equatorial Guinea

Israel

Kuwait

Mauritania

Morocco

Saudi Arabia

Syrian Arab Republic

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 18 MAY 2007[a]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bosnia and Herzegovina	4 June 2003
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	7 July 1988
Poland	12 June 1993

State party	Date of entry into force
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia and Montenegro	12 March 2001
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Ukraine	12 September 2003
Venezuela	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 18 May 2007

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 18 May 2007[b]

Azerbaijan	4 February 2002
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Seychelles	6 August 2001

Notes

[a] A total of 55 States parties have made the declaration under article 21.

[b] A total of 56 States parties have made the declaration under article 22.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2007

Name of member	Country of nationality	Term expires on 31 December
Ms. Essadia BELMIR	Morocco	2009
Mr. Guibril CAMARA	Senegal	2007
Ms. Felice GAER	United States of America	2007
Mr. Luis GALLEGOS CHIRIBOGA	Ecuador	2007
Mr. Claudio GROSSMAN	Chile	2007
Mr. Alexander KOVALEV	Russian Federation	2009
Mr. Fernando MARIÑO	Spain	2009
Mr. Andreas MAVROMMATIS	Cyprus	2007
Ms. Nora SVEAASS	Norway	2009
Mr. Xuexian WANG	China	2009

Annex V

OVERDUE REPORTS

Initial reports

State party	Date on which the report was due	Revised date*
Guinea	8 November 1990	
Somalia	22 February 1991	
Seychelles	3 June 1993	
Cape Verde	3 July 1993	
Antigua and Barbuda	17 August 1994	
Ethiopia	12 April 1995	
Chad	9 July 1996	
Côte d'Ivoire	16 January 1997	
Malawi	10 July 1997	
Honduras	3 January 1998	
Kenya	22 March 1998	
Bangladesh	4 November 1999	
Niger	3 November 1999	
Burkina Faso	2 February 2000	
Mali	27 March 2000	
Turkmenistan	25 July 2000	
Mozambique	14 October 2000	
Ghana	6 October 2001	
Botswana	7 October 2001	
Gabon	7 October 2001	
Lebanon	3 November 2001	
Sierra Leone	25 May 2002	
Nigeria	28 June 2002	
Saint Vincent and the Grenadines	30 August 2002	
Lesotho	11 December 2002	

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* The date indicated in brackets is the revised date for submission of the State party's report, in accordance with the Committee's decision at the time of adoption of recommendations regarding the last report of the State party.

State party	Date on which the report was due	Revised date*
Mongolia	23 February 2003	
Ireland	11 May 2003	
Holy See	25 July 2003	
Equatorial Guinea	6 November 2003	
Djibouti	5 December 2003	
Timor-Leste	16 May 2004	
Congo	30 August 2004	
Swaziland	25 April 2005	
Maldives	20 May 2005	
Liberia	22 October 2005	
Syrian Arab Republic	19 September 2005	
Mauritania	17 December 2005	
Nicaragua	4 August 2006	
Madagascar	13 January 2007	

Second periodic reports

State party	Date on which the report was due	Revised date*
Afghanistan	25 June 1992	
Belize	25 June 1992	
Philippines	25 June 1992	
Uganda	25 June 1992	[25 June 2008]
Togo	17 December 1992	[17 December 2008]
Guyana	17 June 1993	[31 December 2008]
Brazil	27 October 1994	
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Yemen	4 December 1996	
Jordan	12 December 1996	
Bosnia and Herzegovina	5 March 1997	[5 March 2009]
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Cambodia	13 November 1997	
Burundi	19 March 1998	[31 December 2008]
Slovakia	27 May 1998	
Antigua and Barbuda	17 August 1998	
Ethiopia	12 April 1999	

State party	Date on which the report was due	Revised date*
Albania	9 June 1999	[9 June 2007]
Namibia	27 December 1999	
Tajikistan	9 February 2000	[31 December 2008]
Cuba	15 June 2000	
Chad	9 July 2000	
Moldova	27 December 2000	[27 December 2004]
Côte d'Ivoire	16 January 2001	
Democratic Republic of the Congo	16 April 2001	[16 April 2009]
El Salvador	16 July 2001	
Kuwait	6 April 2001	
Malawi	10 July 2002	
Honduras	3 January 2002	
Kenya	22 March 2002	
Kyrgyzstan	4 October 2002	
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[4 April 2007]
Bangladesh	3 November 2003	
Niger	3 November 2003	
South Africa	8 January 2004	[31 December 2009]
Burkina Faso	2 February 2004	
Mali	27 March 2004	
Bolivia	11 May 2004	
Turkmenistan	24 July 2004	
Japan	29 July 2004	[30 June 2011]
Mozambique	13 October 2004	
Qatar	10 February 2004	[10 February 2005]
Botswana	7 October 2005	
Gabon	8 October 2005	
Lebanon	5 October 2005	
Ghana	18 December 2005	
Sierra Leone	25 May 2006	
Nigeria	28 July 2006	
Saint Vincent and the Grenadines	31 August 2006	
Lesotho	12 December 2006	
Mongolia	23 February 2007	
Ireland	11 May 2007	

State party	Date on which the report was due	Revised date*
	Third periodic reports	
Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	
Senegal	25 June 1996	
Uruguay	25 June 1996	
Turkey	31 August 1997	[31 August 2005]
Tunisia	22 October 1997	[30 November 1999]
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[1 December 2000]
Liechtenstein	1 December 1999	
Romania	16 January 2000	
Nepal	12 June 2000	[12 June 2008]
Serbia	3 September 2000	
Yemen	4 December 2000	
Jordan	12 December 2000	
Bosnia and Herzegovina	5 March 2001	[5 March 2009]
Benin	10 April 2001	
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	
Slovakia	27 May 2002	
Antigua and Barbuda	17 August 2002	
Armenia	12 October 2002	
Costa Rica	10 December 2002	
Sri Lanka	1 February 2003	[1 February 2007]
Ethiopia	12 April 2003	
The former Yugoslav Republic of Macedonia	11 December 2003	
Namibia	27 December 2003	
Republic of Korea	7 February 2004	[7 February 2012]
Cuba	15 June 2004	
Chad	9 July 2004	
Côte d'Ivoire	16 January 2005	

State party	Date on which the report was due	Revised date*
Lithuania	1 March 2005	
Kuwait	5 April 2005	
Democratic Republic of the Congo	16 April 2005	[16 April 2009]
El Salvador	16 July 2005	
Azerbaijan	14 September 2005	
Honduras	3 January 2006	
Kenya	22 March 2006	
Malawi	10 July 2006	
Slovenia	14 August 2006	
Kyrgyzstan	4 October 2006	
Saudi Arabia	20 October 2006	
	Fourth periodic reports	
Afghanistan	25 June 2000	
Belarus	25 June 2000	
Belize	25 June 2000	
France	25 June 2000	[25 June 2008]
Philippines	25 June 2000	
Senegal	25 June 2000	
Uruguay	25 June 2000	
Austria	27 August 2000	[31 December 2008]
Panama	22 September 2000	
Colombia	6 January 2001	
Ecuador	28 April 2001	[28 April 2009]
Libyan Arab Jamahiriya	14 June 2002	
Algeria	11 October 2002	
Brazil	27 October 2002	
Guinea	8 November 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Tunisia	22 October 2001	
Liechtenstein	1 December 2003	
Romania	16 January 2004	
Nepal	12 June 2004	[12 June 2008]
Bulgaria	25 June 2004	[25 June 2008]
Cameroon	25 June 2004	
Cyprus	16 August 2004	
Bolivarian Republic of Venezuela	20 August 2004	

State party	Date on which the report was due	Revised date*
Croatia	7 October 2004	[7 October 2008]
Serbia	3 September 2004	
Yemen	4 December 2004	
Jordan	12 December 2004	
Monaco	4 January 2005	[4 January 2009]
Colombia	6 January 2001	
Bosnia and Herzegovina	5 March 2005	[5 March 2009]
Benin	10 April 2005	
Cape Verde	3 July 2005	
Cambodia	13 November 2005	
Czech Republic	31 December 2005	[31 December 2009]
Mauritius	7 January 2006	
Slovakia	27 May 2006	
Morocco	20 July 2006	
Antigua and Barbuda	17 August 2006	
Costa Rica	10 December 2006	
Sri Lanka	1 February 2003	[1 February 2007]
Ethiopia	12 April 2007	
	Fifth periodic reports	
Afghanistan	25 June 2004	
Argentina	25 June 2004	[25 June 2008]
Belarus	25 June 2004	
Belize	25 June 2004	
Egypt	25 June 2004	
France	25 June 2004	[25 June 2008]
Hungary	25 June 2004	[31 December 2010]
Mexico	25 June 2004	[31 December 2010]
Philippines	25 June 2004	
Russian Federation	25 June 2004	[31 December 2010]
Senegal	25 June 2004	
Switzerland	25 June 2004	[25 June 2008]
Uruguay	25 June 2004	
Austria	27 August 2004	[31 December 2008]
Panama	27 September 2004	
Spain	19 November 2004	
Colombia	6 January 2005	
Ecuador	25 April 2005	[28 April 2009]
Greece	4 November 2005	[4 November 2009]
China	2 November 2005	

State party	Date on which the report was due	Revised date*
Libyan Arab Jamahiriya	14 June 2006	
United States of America	19 November 2005	[19 November 2011]
United Kingdom of Great Britain and Northern Ireland	6 January 2006	[6 January 2008]
Finland	28 September 2006	
Algeria	11 October 2006	
Brazil	27 October 2006	
Guinea	8 November 2006	
Somalia	22 February 2007	
Paraguay	10 April 2007	

Annex VI

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS THIRTY-SEVENTH AND THIRTY-EIGHTH SESSIONS (IN ORDER OF EXAMINATION)

A. Thirty-seventh session

Report	Rapporteur	Co-rapporteur
Tajikistan: Initial report (CAT/C/TJK/1)	Ms. Gaer	Mr. Kovalev
Mexico: Fourth periodic report (CAT/C/55/Add.12)	Mr. Grossman	Mr. Mariño Menendez
Burundi: Initial report (CAT/C/BDI/1)	Mr. Mariño Menendez	Mr. Camara
Russian Federation: Fourth periodic report (CAT/C/55/Add.11)	Ms. Gaer	Ms. Belmir
Guyana: Initial report (CAT/C/GUY/1)	Mr. Mavrommatis	Mr. Mariño Menendez
South Africa: Initial report (CAT/C/52/Add.3)	Mr. Mavrommatis	Mr. Wang
Hungary: Fourth periodic report (CAT/C/55/Add.10)	Mr. Grossman	Ms. Sveaass

B. Thirty-eighth session

Report	Rapporteur	Co-rapporteur
Denmark: Fifth periodic report (CAT/C/81/Add.2)	Mr. Grossman	Mr. Wang
Luxembourg: Fifth periodic report (CAT/C/81/Add.5)	Mr. Camara	Ms. Belmir

Report	Rapporteur	Co-rapporteur
Italy: Fourth periodic report (CAT/C/67/Add.3)	Ms. Sveaass	Mr. Mariño Menendez
The Netherlands: Fourth periodic report (CAT/C/67/Add.4)	Mr. Mavrommatis	Ms. Sveaass
Ukraine: Fifth periodic report (CAT/C/81/Add.1)	Ms. Gaer	Mr. Kovalev
Japan: Initial report (CAT/C/JPN/1)	Mr. Mariño Menendez	Mr. Kovalev
Poland: Fourth periodic report (CAT/C/67/Add.5)	Mr. Grossman	Mr. Gallegos

Annex VII

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 227/2003

Submitted by:	A.A.C. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	6 February 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2006,

Having concluded its consideration of complaint No. 227/2003, submitted to the Committee against Torture by A.A.C. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is A.A.C., a Bangladeshi national born in 1970 and awaiting deportation from Sweden to Bangladesh at the time of submission of the complaint. He claims that his expulsion to Bangladesh would constitute a violation by Sweden of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 7 February 2003, the State party was requested, pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant while his complaint was under consideration by the Committee. On 24 March 2003, the State party informed the Committee that it had acceded to its request not to expel the complainant.

The facts as presented by the author

2.1 The complainant has been a sympathizer of the Bangladesh Freedom Party (BFP) since 1992 and became a member in 1994. In 1995, he was elected as information secretary of the BFP in the Naria police district. His duties included arranging meetings, putting up posters, writing slogans, recruiting members, holding events where speeches were made and acting against the then governing party, the Awami League. When the national leaders of his party were arrested and sentenced for the murder of Sheikh Mujibur Rahman, the father of the then Prime Minister and the founder of the Awami League, the complainant arranged demonstrations in favour of them being freed. On 15 August 1997, he was arrested while holding a demonstration in protest against the Awami League. He was accused of illegal possession of arms, making bombs and distributing anti-State propaganda. He was taken to a cell at the police station in Naria, held during 10 days and subjected to maltreatment from which he still suffers. He was released by paying a bribe.

2.2 The complainant left Naria and went to Dhaka where he stayed with his maternal uncle. After a few days, members of the Awami League saw him and followed him to his uncle's home. On the same night, he saw the police enter through the gate of his uncle's home, and he jumped out of a window and took a train to Sylhet, where his sister lives. After a few days, the police came to his sister's home with a person from Naria. The complainant managed to escape and went to the hills in Sylhet.

2.3 In the first week of December 1997, the complainant returned to his home in Naria and resumed his political activities. He was attacked and maltreated by supporters of the Awami League on 9 January 1998, on his way home. His brother then took him to another residential area where his wife visited him and told him that the police were looking for him because of accusations made against him, and that the Awami League had also been at his home to collect money. His wife became pregnant and one month before her delivery, he moved back to Naria, where he again resumed, in secret, his political activities.

2.4 On the night of 29 June 1999, the police arrested him at home and took him to the police station. He was accused of possessing illegal arms and explosives, the making of bombs and anti-State propaganda. This time he remained in custody for 15 days. During this period, the police struck him with fists and a metal pipe, and kicked him. He was released after a bribe was paid. Thereafter, he did not dare to stay at home but lived in three different locations.

2.5 In February 2000, the complainant planned to go back to Sonda by boat but a neighbour warned him that she had heard how two supporters of the Awami League planned to use weapons against him in the harbour. He, therefore, returned to Dhaka and after having stayed there for a while, he left for Khulna.

2.6 In August 2000, he went to India for medical treatment for the problems that he had because of the maltreatment he had been subjected to in June 1999 - respiratory difficulties and pain in the back. In October 2000, when he came back to Bangladesh, his family told him that he was accused of possession of illegal arms and explosives, the making of bombs and distributing anti-State propaganda. He had also been accused of crimes against the public order and treason in accordance with the Public Safety Act. During the then Prime Minister's visit to Shariatpur district, the police had found explosives in the district and the complainant was regarded as being responsible for their presence there. The complainant stayed in hiding until he left Bangladesh on 4 December 2000.

2.7 On 5 December 2000, the complainant entered Sweden and requested asylum two days later. He stated that he risked being sentenced to at least 15 years in prison because of false accusations if he were forced to return to Bangladesh. He also stated that he risked being arrested by the police and subjected to maltreatment or torture, and subsequently killed by the police as well as being executed by supporters of the Awami League. The complainant stated to the

Swedish authorities that his health was very bad - he suffered from anxiety, lack of sleep, nightmares, difficulties concentrating and vertigo. He heard noises from the torture to which he had been subjected, and he heard his son crying. He was feeling such enormous pain after the maltreatment that he had difficulties in sitting still for any length of time. He also submitted medical reports, from which it emerged that because of anguish he suffers from headaches, vertigo, lack of sleep and, sometimes, respiratory difficulties. The complainant invoked reports by Amnesty International and the United States Department of State,[a] which, he claims, support the conclusion that police torture of activists and political opponents to extract information and to intimidate is often instigated and supported by the executive branch. He also pointed out that policemen who had been guilty of torture seldom were punished or dismissed from their jobs.

2.8 The Migration Board denied his application on 9 April 2001 stating that the complainant could not be regarded as a refugee according to the 1951 Convention on the Status of Refugees and the Swedish Aliens Act of 1989. Firstly, the Board found that the complainant did not face any risks from the Bangladeshi authorities on account of his political activities since the BFP is a legal party; his political activities had taken place at a relatively low level and had been allowed. Secondly, the Board did not believe the complainant's statement regarding the accusations against him, since it was not credible that he would be released, even by paying a bribe, if he were accused of several offences, new and old. The Board also pointed out that the complainant had had a passport issued on 14 August 2000 in spite of the accusations against him. Thirdly, the Board considered that the complainant had a chance to get his case reviewed through legal procedures in Bangladesh, which could be considered to be adequate and impartial.

2.9 The Migration Board also found that the complainant could not be regarded as a person otherwise in need of protection in accordance with the Aliens Act, because the maltreatment he suffered in August 1997 and June 1999 was not permitted by the Government or the authorities in Bangladesh, but constituted acts of cruelty committed by lone policemen who had taken the law into their own hands. The Board applied the same reasoning for maltreatment committed by supporters of the Awami League. Lastly, the Board found that the complainant was not entitled to a residence permit in Sweden on humanitarian grounds.

2.10 In his appeal to the Aliens Appeals Board, the complainant referred to the conclusions of Swedish doctors. One concluded that the police had subjected the complainant on two occasions, in 1997 and 1999, to the following torture: hit with blunt instruments, such as fists, and a weapon; stabbed with a knife and glass; burned with a heated metal pipe; beaten on the soles of his feet with a police truncheon; hung from the ceiling; subjected to electrical shocks in his temples; attempted suffocation by having his head thrust under water in a barrel and by having water infused into his nose; threats against the complainant's life by putting a syringe filled with poison and a gun to his head. He found that the complainant had suffered permanent physical damage in the form of chronic headache, pain in the lower section of his back, loss of feeling in the left side of his face, sometimes a weakness in the whole of the left section of his body, attacks of vertigo. The second doctor certified that the complainant had been subjected to medical treatment in Sweden since 8 January 2001, when he contacted the medical ward in Östhammar and was diagnosed as being in a condition of anxiety. The complainant was in contact with the other medical wards in January and April 2001. According to the certificate, the complainant's symptoms were characterized by: feelings of being pursued; fear, and having difficulties in feeling confidence in people; physical symptoms in the form of sickness when he sees a police car; pain in his body when he thinks of the torture; lack of sleep; nightmares; attacks of feelings of being absent. The complainant also confessed to having thoughts of committing suicide. The doctor concluded that the diagnosis of Post Traumatic Stress Disorder (PTSD) in all probability was correct, and that it could be described as a case of "mental illness that had been brought about by very difficult experiences". The doctor further concluded that there was information which led to the conclusion that the complainant was in a process of suicidal development. A third doctor's report confirmed that the complainant was in contact with her ward since 11 July 2001 after being referred there by another medical ward and by the psychiatric clinic at St. Göran's Hospital. The complainant was diagnosed with depression and PTSD related, inter alia, to the persecution and the torture to which he has been subjected in Bangladesh. A fourth doctor, a psychiatrist, confirmed this diagnosis describing the complainant as showing strong feelings of anxiety, flashbacks from situations of torture, being always on the move and depressive, and having difficulty in concentrating. The complainant insisted that a special doctor should be appointed by the Aliens Appeals Board in order to scrutinize the medical evidence in the case. On 23 May 2002, the Board decided to deny the motion, without giving any reasons for the decision.

2.11 In his appeal, the complainant stated that the decision by the Migration Board was inconsistent, since the Board seemed not to believe his statement regarding the question of what he had been subjected to by the Bangladeshi authorities. The Board stated that it had not doubted his statement regarding the torture and maltreatment to which he had been subjected, however, it had not believed his statement about the arrests. By decision of 24 July 2002, the Aliens Appeals Board upheld the decision by the Migration Board and shared its findings on the general conditions in Bangladesh and its legal system. The Aliens Appeal Board found that the complainant could not be considered as a refugee or as a person otherwise in need of protection according to the Aliens Act; and that "considering all the circumstances" he could not be granted a residence permit for humanitarian reasons.

2.12 On 4 February 2003, the complainant was taken into police custody awaiting execution of the deportation order.

The complaint

3.1 The complainant claims that there are substantial grounds for believing that he would be subjected to torture if he were forced to return to Bangladesh, a violation of article 3 by Sweden of the Convention. The complainant refers to the medical reports (paragraph 2.10 above) concluding that he had previously been subjected to torture and submits that his description of the torture to which he has been subjected coincides with what is generally known through the human rights reports about torture in Bangladesh. Those reports also support the conclusion that police torture of political opponents is often instigated by the executive; that the judiciary system does not provide sufficient protection to the victims, that the lower courts are not politically independent of the executive, and that the decisions of the higher courts are often ignored or circumvented by the executive. The complainant also claims that the elections in 2001, where the Awami League was replaced by the Bangladesh Nationalist Party (the BNP), did not constitute such a fundamental change in the political circumstances in Bangladesh that the grounds for persecution no longer exist; and that people who had been falsely accused or charged on account of their political activities were acquitted of these accusations or charges. In view of the prevailing situation in the country and of the fact that neither the Migration Board nor the Aliens Appeals Board had questioned the fact the complainant was subjected to torture in Bangladesh, he maintains that he would still run a foreseeable, substantial and personal risk of being subjected to arrest and torture if he were forced to return to Bangladesh.

3.2 He also claims that the execution of a deportation order would in itself constitute a violation of article 16 of the Convention, in view of his fragile psychiatric condition and severe Post Traumatic Stress Disorder, resulting from the torture to which he had been subjected.

The State party's observations on admissibility and merits

4.1 By letter of 24 April 2003, the State party acknowledges that all domestic remedies were exhausted but it disputes whether the complaint disclosed the minimum level of substantiation required for the purposes of admissibility.[b]

4.2 The State party also contends that the claim of a violation of article 16 in relation to the execution of the deportation order, in view of the complainant's fragile psychiatric condition and severe PTSD, is incompatible with the provisions of the Convention. The State party invokes the Committee's general comment on article 3, which spells out that a State party's obligation to refrain from returning a person to another State is only applicable if the person is in danger of being subjected to torture, as defined in article 1.[c] There is no reference to "other acts of cruel, inhuman or degrading treatment or punishment" in article 3, as there is in article 16. The purpose of article 16 is rather to protect those deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment.

4.3 The State party recalls the procedures governing asylum claims in Sweden. According to the Aliens Act, an alien is entitled to a residence permit in Sweden, inter alia if he has left his country of nationality because of a well-founded fear of being sentenced to death or corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment. Under chapter 8, the national authorities have to consider the same matters when it comes to enforcing a decision to refuse entry or executing an expulsion decision. Even if a decision to refuse entry or an expulsion decision become enforceable after appeal, the alien may be granted a residence permit if he files a so-called new application to the Aliens Appeals Board. An expulsion order is enforced only where an alien has refused to abide by the relevant order voluntarily; coercive measures must be strictly limited to what is necessary and proportionate, and be implemented with due regard to humanitarian considerations as well as respect for personal dignity of the alien. An alien is entitled to a residence permit, inter alia, if he for humanitarian reasons should be allowed to settle in Sweden. Serious illness, both mental and physical, may in exceptional cases constitute humanitarian reasons for granting a residence permit.

4.4 As to the facts of the complaint, the State party clarifies that at his interview by the Migration Board on 1 March 2001, he stated that he was politically active in Bangladesh and a member of the BFP. On account of his activities he had been persecuted by the police and the Awami League and been subjected to false accusations. In August 1997, he was arrested during a demonstration and was held in custody for 10 days. During this time he was maltreated and tortured by the police being accused of possessing illegal weapons, of producing bombs and of subversive activities. A bribe was paid for his release. During the interview the complainant stated in details circumstances preceding an attack on him by the supporters of the Awami League on 9 January 1998, as well as his departure from Bangladesh. The complainant explained that a person who had his passport and who paid bribes to different persons at the airport escorted him to the airplane.

4.5 On 9 April 2001, the Migration Board rejected the complainant's application for asylum and ordered his expulsion to the country of origin. The Migration Board did not find the complainant to be entitled to asylum, in need of protection or entitled to a residence permit for any other reasons. The complainant appealed the decision but the Aliens Appeals Board turned down the appeal on 24 July 2002. After the decision from the Aliens Appeals Board, the complainant went into hiding. He was discovered by the police in connection with a labour inspection on 4 February 2003 and taken into custody.

4.6 On the merits, the State party argues that, in the light of the general human rights situation in Bangladesh and the evidence advanced, the complainant failed to make out a personal and substantial risk of torture, as defined in article 1, which would render his expulsion contrary to article 3. As to the general situation, the State party concedes that it is problematic, but points to progressive improvement over a longer term. Following the introduction of democratic rule in the early 1990s, no systematic oppression of dissidents has been reported, and human rights groups are generally permitted to conduct their activities. The BNP returned to power (after holding power from 1991 to 1996 and being in opposition from 1996 to 2001) following elections on 1 October 2001 that were declared free and fair. Violence is however a pervasive element in political life, with supporters of different parties clashing with each other and with police during rallies and demonstrations. Although the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading treatment, the police reportedly use torture, beatings and other forms of abuse while interrogating suspects. Acts of torture are seldom investigated, and the police, whose members are allegedly utilized by the Government for political purposes, are reluctant to pursue investigations against persons affiliated with the ruling party. The higher courts are by and large independent and rule against the Government in high-profile cases. Persons are occasionally tried in absentia by the courts, although this is rarely done. The Public Safety Act was also repealed by the Government in April 2001.

4.7 In 2002, members of the State party's Aliens Appeals Board visited Bangladesh, meeting with members of Parliament and the Executive, representatives of local embassies and international organizations, and, according to the classified report from this tour, found no institutional persecution. While "high-profile" persons may be arrested and harassed by the police, political persecution is rare at the grass-roots level. Leading politicians may be subjected to false accusations for murder, subversive activities and possessing weapons. The State party adds that as of 1998 Bangladesh is a party to the Convention against Torture and, since 2001, to the International Covenant on Civil and Political Rights.

4.8 Turning to the real, personal and foreseeable risk of torture which the complainant is required to face under article 3 in the event of a return, the State party points out that its authorities explicitly applied the relevant Convention provisions. In addition, the competent authorities are in an advantageous position in assessing applications, particularly in the light of the experience gained in granting 629 cases on article 3 grounds in 1,427 cases from Bangladesh over a 10-year period. Accordingly, weight should be given to the decisions of the Immigration and Aliens Appeals Boards, whose reasoning the State party adopts.

4.9 The State party submits that the complainant in this case bases his claim on a presumption that he risks being tortured upon return to Bangladesh as a consequence of his membership in the BFP and because of the accusations against him under the Public Safety Act, now repealed.

Given that the Bangladeshi political context has significantly changed by virtue of the 2001 electoral defeat of the Awami League government, the complainant's alleged persecutor, there would appear no reason for the complainant to fear persecution from the police, let alone a danger of being subjected to torture.

4.10 In addition, the State party observes that the complainant had not held any leading position within the party, and as stated in the report of the Aliens Appeals Board (paragraph 4.7 above), party members at the grass-roots level are rarely persecuted by the authorities. Even if the complainant had been subjected to torture in the past, it has not been shown that he is still wanted by the police today, nor that he would still be in danger of being persecuted if he returned to Bangladesh now.

4.11 The State party notes that, if there is a current risk of persecution from the Awami League, this is a wholly non-governmental entity and the acts of the Awami League cannot be attributable to the authorities. According to the jurisprudence of the Committee, such persecution falls outside the scope of article 3 of the Convention.[d] In addition, this persecution would be of a local character and the complainant could therefore secure his safety by moving within the country.

4.12 The State party notes that the complainant resumed his political activities in December 1997 after being allegedly released from custody in August 1997. Furthermore, after his second detention in June 1999, the complainant made no attempt to leave the country but stayed there until December 2000, with the exception of a visit to India in August and September 2000. The State party suggests that this indicates that not even the complainant believed himself to be in danger of being arrested and tortured even at that time. The State party questions the fact that the complainant, allegedly arrested by the police and accused of possessing illegal weapons and subversive activities in August 1997 and in June 1999, would have no difficulty in obtaining a passport from the authorities in August 2000.

4.13 On the claim under article 16, the State party refers to two cases in which there was medical evidence of PTSD and a claim that state of health prevented expulsion. In *G.R.B. v. Sweden*,[e] the Committee considered that an aggravation of state of health possibly caused by deportation did not rise to the threshold of treatment proscribed by article 16, attributable to the State party, while in *S.V. v. Canada*,[f] the Committee considered the claim insufficiently substantiated.[g]

4.14 The State party acknowledges that according to the medical evidence the complainant suffers from PTSD and his health has deteriorated during consideration of his asylum application. It considers, however, that there is no substantial basis for his fear of returning to Bangladesh. The State party notes that, in March and April 2001, the complainant applied for an exception from the requirement to have a work permit, since he had been offered a job. After the decision of the Aliens Appeals Board in July 2002, the complainant remained in hiding. When he was discovered by the police, he was working as a greengrocer. Thus, the State party submits, the complainant's psychiatric condition should be assessed in that light and has not been of such seriousness that it prevented him from working. In addition, in enforcing the expulsion order, the State party ensures that it is carried out in a humane and dignified manner, taking into account the complainant's state of health. The State party, therefore, contends that the possible aggravation of the complainant's state of health that his deportation may cause would not amount to cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party.

The complainants' comments on the State party's observations

5.1 On 18 July 2003, the complainant maintained that his communication fulfils the minimum standard of substantiation for the purposes of admissibility of a claim under article 3. He also contends that the communication fulfils the minimum criteria of article 16 and that the execution of the expulsion order would be in violation of this article by the Swedish authorities. Despite his poor mental health, he was taken into custody and the speedy manner in which the execution was planned to take place, shows that it would not have taken place in the humane and dignified way. He refers to a report of the European Commission Against Racism and Intolerance (ECRI),[h] which in turn refers to the criticism that has been raised against the Swedish authorities for executing expulsion orders without respect for the dignity of the individual involved.

5.2 In addition to already submitted reports on the general human rights situation in Bangladesh, the complainant also invokes an additional Amnesty International report.[i] The report concludes that torture has been widespread in Bangladesh for years, that successive Governments have not addressed the problem, and that there is a climate of impunity. Court proceedings against a public employee, such as a police officer, are only possible with the Government's agreement, which is rarely forthcoming. The complainant challenges the State party's assessment that activists at grass-roots level are not the subject of false accusations. He also reminds the Committee of the "declaration" made by the People's Republic of Bangladesh that it would apply paragraph 1 of article 14, of the Convention against Torture "in accordance with the existing laws and legislation in the country". The complainant submits that contrary to the provisions of this article, victims of torture in Bangladesh have not been able to obtain redress and or compensation to which they are entitled. He refers to the enactment of the so-called Joint Drive Indemnity Act that granted immunity from prosecution to military and government officials for the instances of torture that allegedly occurred during the so-called Operation Clean Heart.

5.3 In relation to his personal circumstances, the complainant reiterates that he faces a foreseeable, real and personal risk of torture if he is returned to Bangladesh. Without contesting the statistics presented by the State party (paragraph 4.8 above), the complainant argues that the State party did not show how many of those who applied for asylum were granted asylum or a residence permit as persons otherwise in need of protection. He also submits that compared to other categories, the asylum-seekers from Bangladesh are very few each year.[j] Thus, the experience of the State party's immigration authorities regarding this category is far less than that concerning other categories of asylum-seekers. The complaint further argues that no fundamental changes of the political situation in Bangladesh have taken place. The BFP is a party that, insofar as it still exists, is in opposition to the present four-party coalition Government headed by the BNP. The complainant argues that neither the State party nor its migration authorities contested this fact or his evidence of past torture. He submits that, where it is established that a person has been subjected to torture in the past, there should be a presumption that this person runs a risk of torture in the future, unless circumstances have manifestly changed. The complainant adds that a number of laws in Bangladesh, such as the Code of

Criminal Procedure and the Special Powers Act, create conditions that facilitate torture by enabling the police to arrest a person on vaguely formulated grounds, or without charge, and to keep him/her in prolonged detention. While accepting that the Public Safety Act was repealed in April 2001, the complainant argues that the Special Powers Act and the other legislation referred to by Amnesty International[k] are still applicable and that it is not known of any case raised on the basis of Public Safety Act which has been closed or withdrawn.

5.4 The complainant further explains (see paragraph 4.12 above) that he obtained his passport in August 2000, that is, before the accusations of harbouring explosives and illegal arms, making bombs, distribution of anti-State propaganda, crimes against public order and treason were made against him.

Supplementary submissions from the State party and the complainant's comments

6.1 In a further submission dated 1 September 2003, the State party acknowledges that ECRI had had certain remarks on Sweden as regards the removal of persons whose asylum application has been turned down. ECRI observed, specifically, that there had been cases of persons who had against their will been deported to countries completely unknown to them because of difficulties in establishing their nationality. There were also cases of excessive use of force and/or unusual means of restraint used by officers during the expulsion of foreign nationals from Sweden. The State party refers to an appendix of the report where the State party acknowledged that there had been forced removals to countries that were not countries of origin when there were difficulties in verifying the nationality of asylum-seekers but stated that ECRI "pictures the situation in Sweden incorrectly". The State party confirms that the aim is always to remove persons to the country of origin or a country where the person has a right to legally remain.

6.2 In a further submission dated 11 November 2003, the complainant maintains that the Swedish authorities have been criticized not only because they sent an asylum-seeker to the wrong country but also for the manner in which the expulsion order has been executed. He submits that this is an issue in his case and that the manner in which he has been treated by the Swedish authorities violate article 16 of the Convention.

6.3 On 16 November 2005, the State party submitted that since a new remedy to obtain a residence permit had come into force under temporary legislation, the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or at least be adjourned awaiting the outcome of the application of this new procedure. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until a new Aliens Act entered into force on 31 March 2006. These temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia if there is reason to assume that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order. Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a protracted period and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. It shall further be taken into account whether the alien has committed crimes and a residence permit may be refused for security reasons. No refusal-of-entry or expulsion order will be enforced while the case is under consideration of the Migration Board. Decisions made by the Migration Board under chapter 2, section 5 (b), as amended, are not subject to appeal. Applications lodged with the Migration Board under the new legislation, which are still pending by 30 March 2006, will continue to be handled according to the temporary amendments of the Aliens Act. The same applies to cases that the Board has decided to review on its own initiative.

6.4 On 31 March 2006, the complainant responded that on 18 November 2005 the Swedish Migration Board decided to take up his case for examination under the temporary legislation. On 3 March 2006 the Board decided not to grant a residence permit, and to uphold the expulsion order. In the complainant's further submission dated 12 April 2006, the complainant explained that in the application before the Board he maintained the reasons for asylum that he had given earlier before the Migration Board, the Aliens Appeals Board and the Committee against Torture. He also referred to new medical evidence from January-February 2006 which corroborated that the complainant had been in contact with psychiatric care in Sweden since 2001 and that his initial diagnosis was PTSD.

6.5 The Migration Board based its decision of 3 March 2006 on the grounds that these reasons had already been taken up by the migration authorities and that no new circumstances had emerged regarding them and the risks which the complainant would run if he would have to return to Bangladesh. The Board, therefore, found that he could not be granted asylum or a residence permit as a person otherwise in need of protection. Secondly, the Board found, based on its practice under the temporary amendments to the Act that a single person must have been in Sweden for at least eight years before a residence permit can be granted on those grounds, that the length of the complainant's stay in Sweden since 2000 was not sufficient. Thirdly, the Board found that his medical evidence did not show that he suffered from such a serious mental illness or comparable condition that a residence permit should be granted for medical reasons and that he could receive adequate treatment in his home country. Therefore, no grounds existed for granting a permit for humanitarian reasons.

6.6 The complainant submits to the Committee that on 11 January 2006 he had been in contact with his brother in Bangladesh, who informed him of the continuing interest of the police in the complainant and his wife and children. Allegedly, they have to move around the country to avoid the police and militant members of the Awami League.[1] The complainant refers to the United States Department of State and the Swedish Foreign Office's reports of 2005 in support of his claim that the situation regarding torture in police jails has not improved, but worsened. The complainant further claims that restrictive practice used by the Swedish authorities regarding the granting of a residence permit has led to unnecessary suffering on his part and in itself constitutes a violation of articles 3 or 16 of the Convention.

Issues and proceedings before the Committee

Consideration of the admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the exhaustion of domestic remedies was not contested by the State party in its initial submission and on 3 March 2006 a final decision on the complainant's renewed application was reached by the State party's authorities under the temporary amendments to the 1989 Aliens Act.

7.2 With regard to the complainant's allegation raised in the latest submission of 12 April 2006 that the treatment that he has been subjected to by the Swedish authorities by the restrictive practice used by them regarding the granting of a residence permit, which leads to unnecessary suffering on his part, in itself constitutes a violation of article 3 or 16 of the Convention, the Committee considers that the complainant has not submitted sufficient evidence in substantiation of this claim.

7.3 Concerning the claim under article 16 relating to the complainant's expulsion in light of his mental health, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.[m] The Committee notes the medical evidence presented by the complainant demonstrating that he suffers from PTSD, most probably as the consequences of the treatment suffered by him in 1997 and 1999. The Committee considers, however, that the aggravation of the complainant's state of health which might be caused by his deportation is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible.

7.4 As to the claim under article 3 concerning torture, the Committee considers, particularly in light of the complainant's account of his previous torture, that he has substantiated this claim, for purposes of admissibility. In the absence of any further obstacles to the admissibility of this claim, the Committee accordingly proceeds with its consideration on the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the removal of the complainant to Bangladesh violated the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 In assessing the risk of torture in the present case, the Committee has noted the complainant's submission that he was twice previously tortured in Bangladesh. However, as the State party points out, according to the Committee's general comment, previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin; in this regard, the Committee must consider whether or not the torture occurred recently, and in circumstances which are relevant to the prevailing political realities in the country concerned. In the present case, the torture to which the complainant was subjected occurred in 1997 and 1999, which could not be considered recent, as well as in quite different political circumstances, specifically when the BFP, a party the complainant is a member of, was in opposition to the then ruling party, the Awami League.

8.4 The Committee has taken note of the submissions regarding the general human rights situation in Bangladesh and the reports that torture is widespread; however, this finding alone does not establish that the complainant himself faces a personal risk of torture if returned to Bangladesh. The Committee observes that the main reason the complainant fears a personal risk of torture if returned to Bangladesh is that he was previously subjected to torture for his membership in the BFP, and that he risks being imprisoned and tortured upon his return to Bangladesh pursuant to his alleged charges under the Public Safety Act.

8.5 The Committee notes that the complainant and the State party are at considerable odds as to the extent to which the BFP can currently be considered in opposition to the current Government. However, the State party's information on this issue is to the contrary. The Committee recalls that in accordance with its general comment," it is for the complainant to present an arguable case and to establish that he would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. In the present case, the Committee is not persuaded that the current political situation in Bangladesh, coupled with the low alleged level of responsibility in the BFP, place the complainant at present danger of being tortured on the basis of membership of the BFP in a non-prominent position.

8.6 The Committee also notes that the complainant and the State party disagree with each other over the issue of probability of obtaining a new passport by a person against whom the charges of possession of illegal weapons and subversive activities have been instituted by the police. In the present case, the Committee is not in a position to deliberate on the matter, given the fact that the complainant did not provide any documents proving that these charges had been instituted against him either in 1997, 1999 or 2000 with the exact dates on which it had happened.

8.7 In relation to the charges which the complainant says were filed against him under the Public Safety Act, the Committee has noted that the current status of these charges against him remains unclear. While the State party's argument that the Act has been repealed has not been contested by the complainant, he doubts any cases raised on the basis of this Act had been closed or withdrawn. In the absence of evidence indicating continued police interest in the complainant, the Committee considers that the complainant has not been able to substantiate his claims that the prosecution of charges filed against him will proceed, even though the relevant legislation has been repealed. As a consequence, it does not consider it likely that the complainant risks detention and torture for this purpose on return.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Bangladesh would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] The United States Department of State (Bangladesh: Country Reports on Human Rights Practices) and Amnesty International (International Report 2002; Endemic Torture since Independence (ASA 13/008/2000); Bangladesh: Torture and Impunity (ASA 13/01/2000); Amnesty International Press Release: Bangladesh: Politically Motivated Detention of Opponents Must Stop (ASA 13/012/2002), issued 6 September 2002).

[b] Reference is made to *Y v. Switzerland*, communication No. 18/1994, Views adopted on 17 November 1994, para. 4.2.

[c] The Committee's general comment on the implementation of article 3, dated 21 November 1997. Reference is made to Peter Burns, "The United Nations Committee against Torture and its role in refugee protection" (Institute of Public Law, University of Bern, 2001).

[d] Reference is made to *G.R.B. v. Sweden*, communication No. 83/1997, Views adopted on 15 May 1998, para. 6.5.

[e] Supra n.d, para. 6.7.

[f] Reference is made to *S.V. v. Canada*, communication No. 49/1996, Views adopted on 15 May 2001, para. 9.9.

[g] The State party refers to the jurisprudence of the European Court of Human Rights on equivalent provisions that have held that ill-treatment must rise to a minimum level of severity and that there is a high threshold where the case does not concern the State party's responsibility for infliction of harm. See, *Cruz Varas and others v. Sweden*, judgement of 20 March 1991, Series A No. 201, para. 83 and the *Bensaid v. the United Kingdom* judgement of 6 February 2001, para. 40.

[h] Reference is made to the Report of the European Commission Against Racism and Intolerance made public on 15 April 2003.

[i] Amnesty International, Bangladesh: Urgent need for legal and other reforms to protect human rights (ASA 13/015/2003), published in May 2003.

[j] Reference is made to the UNHCR Report of November 2001 'Asylum Applications in Industrialized Countries: 1980-1999'.

[k] Supra n.i.

[l] Neither further information nor supporting documents were provided.

[m] Supra n.d and supra n.f.

[n] Supra n.c.

Communication No. 249/2004

Submitted by:	Mr. Nadeem Ahmad Dar (represented by counsel)
Alleged victim:	The complainant
State party:	Norway
Date of complaint:	29 March 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2007,

Having concluded its consideration of complaint No. 249/2004, submitted to the Committee against Torture by Mr. Nadeem Ahmad Dar, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Committee against Torture.

1.1 The complainant is Nadeem Ahmad Dar, a Pakistani citizen born on 2 January 1961, residing in Norway. He initially claimed that his deportation to Pakistan would constitute a violation by Norway of article 3 of the Convention. He now claims that his deportation to Pakistan despite the Committee's request for interim measures constituted a violation by Norway of its obligation to cooperate in good faith with the Committee, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 By note verbale of 2 April 2004, the Committee transmitted the complaint to the State party, together with a request under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Pakistan pending the Committee's consideration of his complaint. The note verbale indicated that this request was made on the basis of the information contained in the complainant's submission and that it could be reviewed, at the request of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. On 1 June 2004, the State party informed the Committee that it would not comply with the Committee's request. However, on 29 June 2004, the State party added that it had decided to refrain from proceeding with the expulsion of the complainant and his family to Pakistan until the court of first instance had reviewed the case.

1.3 On 16 January 2006, the complainant's newly appointed counsel informed the Committee that he had been deported to Pakistan on 22 September 2005.[a] On 15 February 2006, the State party acknowledged the deportation.

1.4 On 5 April 2006 the State party informed the Committee that the complainant had been granted a residence permit for three years. On 21 April 2006, counsel added that he had returned to Norway on 31 March 2006.

1.5 On 30 May 2006, the Special Rapporteur for Interim Measures denied a renewed request for interim measures to prevent the complainant's deportation to Pakistan.

The facts as submitted by the complainant

2.1 The complainant, a retired major from the Pakistani army, is Ahmadi-Muslim. According to a United States Department of State report submitted by the complainant, Ahmadis consider themselves Muslims but do not accept that Muhammad was necessarily the last Prophet. The complainant claims that because of his religion, he had difficulties with his superiors in the army. Attempts on his life allegedly were made on several occasions. The complainant suspects his superiors to have set fire to his house in 1994. During his military service, he was sent to a conflict area, without receiving the backup of any other units that had been promised. He further claims that he runs the risk of acts of vengeance by terrorist organizations such as Jaish Muhammed (JM) and the Mohajir Qomi Movement (MQM) because of his previous position and activities in the army operating against these organizations. The son of his cousins was allegedly mistakenly kidnapped instead of his son in 2001 by JM, but the complainant and some friends managed to rescue him. He further states that he was discriminated against and forced to retire from the army due to his religion.

2.2 The complainant arrived in Norway on 23 April 2002, using his own passport and a visa issued by the Norwegian embassy in Islamabad. He travelled with his wife and four children and applied for asylum on 29 April 2002. His case was heard by the Directorate of Immigration (UDI), which denied his application for asylum on 22 January 2003. The complainant appealed to the Immigration Appeals Board (UNE), which rejected this appeal on 8 January 2004.

2.3 On 31 January 2004, the complainant was informed by his lawyer in Pakistan that he had been accused of blasphemy on 2 January 2002. He submitted a translation of a document entitled "Action against Nadeem Ahmad Dar" addressed to the Station House Officer at the Chong Police station in the Lahore District. Upon hearing this, he filed a new appeal with the Norwegian immigration authorities, which was rejected by UNE on 1 March 2004, on the grounds that the letter from the lawyer and the accusation, which were non-official private documents, did not give the proof that he would be persecuted in Pakistan, and that the late submission of the document cast doubt on its veracity. In a further submission to the Committee, dated 10 March 2005, the complainant submits a copy of an "application for registration of criminal case against the respondent", dated 8 March 2005 and signed by Tahir Yaqoob, accusing him of "preaching against the spirit of Islam". He further asserts that the police have been looking for him at his house to arrest him. He claims that if he were returned and convicted, he would risk the death penalty, in accordance with article 295c of the Pakistani Penal Code.

2.4 The complainant also claims that a case is pending against him under a "Haddood ordinance", with a potential punishment of "14 years' rigorous imprisonment" and "30 stripes".

2.5 The complainant invokes the United States State Department report for 2003, which refers to the discriminatory treatment against religious minorities in Pakistan, including the use of "Hudood" ordinances, which apply different standards of evidence to Muslims and non-Muslims for alleged violations of Islamic law. There are specific legal prohibitions against Ahmadis practising their religion. It mentions that blasphemy laws are most often used against reformist Muslims and Ahmadis. According to the report, no person has been executed by Pakistan under provision 295c of the Penal Code, but some individuals were sentenced to death, and others accused under this provision have been killed by religious extremists.

2.6 On 10 May 2004, the complainant was informed that the UNE had rejected the Committee against Torture's request for interim measures on the ground of non-exhaustion of domestic remedies, and he was requested to leave the country.

The complaint

3. The complainant initially claimed that his deportation to Pakistan would violate article 3 of the Convention, as there were substantial reasons for believing that he would be subjected to torture or other inhuman treatment if returned to Pakistan. He submitted that he may be killed by terrorist organizations and that he faced death penalty because of the pending blasphemy charge against him. He also claimed that if returned to Pakistan, the police would arrest him and torture him in the context of investigation on his pending cases.

State party's observations on admissibility

4.1 On 1 June 2004, the State party submitted its observations on the admissibility of the communication and contended that the communication was inadmissible because the complainant has failed to exhaust domestic remedies. It claimed that an application for judicial review was available to the complainant after his application had been turned down by the immigration authorities. He also had the possibility to file an application for an injunction, asking the court to order the administration to suspend his deportation. The State party submitted that under paragraphs 15-2 and 15-6 of the Legal Enforcement Act 1992, an order for an injunction may be granted if the plaintiff:

(a) Demonstrates that the impugned decision will probably be annulled by the court when the main case is to be adjudicated; and

(b) Shows a sufficient *reason* for requesting an injunction, i.e. that an injunction is necessary to avoid serious damage or harm if the decision were enforced without the court having had the opportunity to adjudicate the main case.

At the time of the State party's submission, the complainant had not addressed the Norwegian tribunals.

4.2 The State party added that its immigration laws give at least the same protection against being sent to areas where one may be at risk of persecution as the provisions governing those issues in the Convention or in other international instruments.

4.3 The State party also informed the Committee that, after careful consideration, it had decided to refuse the Special Rapporteur on New Complaints' request to refrain from expelling the complainant while his case was under consideration by the Committee. The State party explained that the UNE, who had taken the decision, had considered the communication inadmissible on two grounds: the complainant's failure to exhaust domestic remedies, as well as the manifestly ill-founded nature of the communication. It argued that this request was based on the complainant's statement that he had exhausted all domestic remedies, which was contested by the State party. The State party further argued that the complaint was manifestly ill-founded, for lack of credibility of the complainant, and of proves supporting his allegations.

4.4 By further submission of 29 June 2004, the State party informed the Committee that the complainant had filed his case to the courts on 21 June 2004, and that it had decided to refrain from proceeding with the expulsion of the complainant and his family to Pakistan until the court of first instance had reviewed the case.

Complainant's comments on the State party's observations

5.1 On 14 July 2004, the complainant informed the Committee that, on 17 June 2004, he and his family were arrested and brought to a detention centre, awaiting expulsion the next day. However, they were informed that they would be released if they confirmed that they would bring the case to court. The complainant complied and they were released.

5.2 The complainant claimed that the State party presented his case in a selective and biased manner. He argued that he had exhausted domestic remedies as he had received a final decision from UNE, which is a quasi-judicial Appeals Board. In this context, he submitted a diagram explaining the Norwegian court system open to asylum-seekers. According to him, after exhausting the two-tiered administrative remedies, he would have to go through four more judicial stages. He argued that such remedies would be unreasonably prolonged.

5.3 He added that these remedies were not available remedies to an asylum-seeker, as the remedies and the service of a lawyer included high costs, which he could not afford, and which were borne by charitable donations collected on the initiative of the Mayor of his community. He also pointed out that his right to free legal assistance was exhausted, as it only covered three hours of the services of the first attorney appointed or chosen.

5.4 The complainant noted that he was not initially informed that he could take his case to the courts, after exhausting the administrative procedures. Upon receipt of the letter of 10 May 2004, he informed UNE that he would bring his case to court as soon as possible.

5.5 On 21 June 2004, the complainant filed his case in the Oslo City Court (Tingrett) and on 25 June, a court injunction was delivered, preventing the complainant from being expelled before his case would be heard by this court. On 7 December 2004, the Oslo City Court confirmed UNE's decision and rejected the application for a court injunction.

5.6 In further submissions dated 11 and 13 February, and 13 March 2005, the complainant informed the Committee that the police had been ordered to carry out the deportation of the family despite his pending appeal before the High Court. The hearing before this court was scheduled for March 2006. He argued that his appeal before the High Court could not be considered an effective remedy, as the remedy did not have suspensive effect, and as it did not prevent him from being expelled. In particular, he argued that if he returned to Pakistan, he would not be able to return to Norway, as he would either be persecuted or imprisoned.

Committee's admissibility decision

6.1 The Committee considered the admissibility of the complaint at its thirty-fifth session and declared the complaint admissible on 14 November 2005. It ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being considered under another procedure of international investigation or settlement.

6.2 The Committee noted that the State party had challenged the admissibility of the communication on the grounds that all available and effective domestic remedies had not been exhausted. It further noted that the legality of an administrative act could be challenged in Norwegian courts, and that asylum-seekers whose applications for political asylum had been turned down by the UDI and, on appeal by UNE, could seek judicial review before Norwegian courts.

6.3 The Committee noted that after being informed of the possibility to seek judicial review, the complainant initiated proceedings before the courts, and that his case was pending in the High Court at the time of consideration of the admissibility of his complaint by the Committee.

6.4 The Committee observed, however, that these proceedings did not have any suspensive effect, and that the complainant might face irreparable harm if returned to Pakistan before judicial review of his case had been completed.

6.5 In these circumstances, the Committee concluded that the appeal pending in the High Court and possible subsequent appeals did not constitute an effective remedy with regard to the expulsion of the complainant. Consequently, the Committee considered that it was not precluded by article 22, paragraphs 5 (a) and (b), of the Convention, from proceeding with the examination of the communication.

6.6 The Committee considered that the complainant had sufficiently substantiated his claim for the purpose of admissibility.

6.7 The Committee considered that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. The Committee noted that compliance with the interim measures called for by the Committee was essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee. The State party was invited to comply with the Committee's request for interim measures of protection.[b]

Update of factual background and issues in relation to the request for interim measures

Interim measures and deportation of the complainant

7.1 On 16 January 2006, counsel informed the Committee that the complainant had been deported to Pakistan. She claims that the State party refuses to cooperate with the Committee and that it did not comply with the Committee's request for interim measures of 2 April 2004. She adds that newspapers in Pakistan have published the registration of a case against the complainant for preaching "Qadianiat",[c] and provides copy of these articles and a translation. She informs that the complainant lives in hiding and fear for his life.

7.2 On 3 February 2006, counsel submitted copies of several documents, including an application for registration of a criminal case against the complainant in Pakistan, by Mr. Tahir Yaqoob, dated 9 March 2005, and a "Contempt Petition" dated 20 October 2005, referring to the above document, requesting the Court to initiate proceedings against the complainant.

State party's comments on issues related to interim measures

8.1 On 15 February 2006, the State party provided an update of the facts. It recalls that the Oslo City Court considered the complainant's case on 7 December 2004. After a two-day hearing with extensive oral statements by the complainant, his wife, and witnesses, including an expert witness from the Immigration Appeals Board (UNE) with personal and up-to-date knowledge of the human rights situation in Pakistan, the Court concluded that the complainant's (and his family's) return to Pakistan would not constitute a breach of section 15 of the Immigration Act, which has the same substantive content as article 3 of the Convention. On the basis of this decision, the Court also held that UNE's expulsion order may be executed. The appeal of the former decision was scheduled to be heard on 3 and 4 April 2006. The latter decision was confirmed by the Borgarting Lagmannsrett (Court of Appeal) on 24 February 2005.

8.2 Further to this decision, the complainant requested UNE to review his case and to stay the expulsion on the basis of new information. On 19 September 2005, UNE confirmed its earlier decision.

8.3 On 21-22 September 2005, the complainant was deported to Islamabad with police escort, and accepted by the Pakistani authorities. He was questioned concerning the expiry of his passport, but was released the same day. While the complainant was being deported, his wife and children took refuge in the local church (church asylum) in Nesodden, and have since remained in Norway.

8.4 On 16 December 2005, the complainant's new counsel filed a request in the Court of Appeal to reverse its decision of 24 February 2005, on the basis of the admissibility decision of the Committee and new documentation allegedly supporting the claim that the complainant is now facing a real and current risk of being subjected to torture on the basis of blasphemy charges against him. She requested the Court to stay the expulsion order against the complainant's family and to order the Government to arrange for the complainant's safe return to Norway. At the time of the submission of the State party, the case was still pending.

8.5 On the issue of the Committee's request for interim measures, the State party explains that the complainant was not expelled until the courts had conducted a thorough review of his case, including direct contact with the complainant himself. He did not establish, before his expulsion took place, that he ran a foreseeable, real and personal risk of being tortured, within the meaning of article 3 of the Convention, if returned to Pakistan.

8.6 The State party concludes that given the extensive judicial and administrative review of the case for 18 months from the date he lodged his complaint to the Committee until the date of expulsion, the fact that he was expelled before the Committee's admissibility decision does not constitute non-compliance with this decision. The State party recalls that at the time the

Committee made its request for interim measures under rule 108 in April 2004, the complainant had not availed himself of all available domestic judicial remedies, and that when he eventually did, the State party agreed to stay his expulsion.

Counsel's comments on issues related to interim measures

9.1 On 9 March 2006, counsel commented on the State party's submission on the issue of interim measures and provided a further factual update. She maintains that the State party did not comply with the Committee's request for interim measures of 2 April 2004 when it expelled the complainant on 21-22 September 2005. The complainant and his family have experienced sufferings further to his expulsion. The State party also failed to bring effective relief within the meaning of article 22, paragraph 5 (b), by engaging in speculation on the facts in violation of due process, and by refusing to grant him legal aid.

9.2 She gives a detailed account of the facts surrounding the deportation on 21-22 September 2005, and the following proceedings. She notes that the complainant was forced to travel with a passport which had expired and which contained a photograph of him in uniform. Upon arrival, he was detained by the Pakistani immigration authorities due to the irregularities of his travel documents,[d] but was later released.

9.3 She also refers to pleadings of the Attorney General and of the complainant, on the interpretation of the obligation to cooperate in good faith with the Committee in the case of a request for interim measures. Counsel quotes a written pleading of the Attorney General of 20 January 2006, which contends that it is not the Convention itself, but merely the Committee's internal procedure regulations (rule 108), which authorizes stay of execution requests, and that such requests are not binding under international law. On the State's obligation to cooperate in good faith with the Committee's request, the Attorney General referred to the Committee's allegedly frequent use of rule 108 and argued that the State's obligation consists in undertaking a thorough and conscientious assessment of the Committee's request and in complying with it as far as possible.

9.4 On the proceedings, counsel informed the Committee that on 27 February 2006, the Court of Appeal, when considering the request for reversal of its decision of 24 February 2005,[e] had decided not to rule on the issue of interim measures until the main hearing. This hearing had not yet taken place at the time of submission of these comments by counsel.

9.5 Counsel claims that the State party violated its obligation to cooperate in good faith with the views of the Committee, when it deported the complainant to Pakistan, despite the standing request of the Committee of 2 April 2004 not to do so. The State party's refusal to admit re-entry of the complainant after the Committee's decision on admissibility and its invitation to comply with its request for interim measures further violated the State party's obligation to cooperate in good faith with the Committee.

9.6 Counsel supports these claims with four arguments. Firstly, the request for interim measures was formally correct, as it was demonstrated that local remedies would not afford the complainant effective relief, and because the expulsion decision was enforceable. Secondly, she argues that the Committee has exclusive powers to interpret and act on its own rules, and that rule 108 requests are particularly important to protect the object and purpose of the individual complaint procedure. Thirdly she claims that the failure to comply with or communicate with the

Committee about the request, before the expulsion of the complainant, constituted acts of bad faith. Counsel recalls the State party's refusal to comply with the request, and the fact that the stay of expulsion was ordered after the complainant had filed a suit and not because of the Committee's request. She further contends that rule 108 invites States parties to communicate with the Committee about the follow-up to requests, and that the State party did not take any steps to report back to the Committee. Fourthly, counsel claims that the above facts and the manner in which the complainant was deported show a pattern of abuse of rights by the State party, in particular because he was forced to travel without a valid passport, which showed a photograph of the complainant in military uniform. She contends that these facts were in contradiction to an agreement between the Norwegian police and the Pakistani embassy, and resulted in an offence under Pakistani immigration law.

9.7 Counsel suggests that the State party may have a duty to restore the situation as far as practically possible without violating Pakistan's sovereignty, and that the duty to restore is a recognized principle of international law.

9.8 Finally, counsel claims that the complainant should be awarded compensation for the State party's non-compliance with the request for interim measures, the hardship suffered by the complainant and his family during the deportation process, and for the State party's failure to grant legal aid.

State party's observations on the merits

10.1 On 28 March 2006, the State party commented on the merits of the communication. It recalls the facts and points out that the Court of Appeal, before which proceedings were still pending when the State party made its observations, was attentive to the fact that the case was pending before the Committee. The State party provides a copy of the pleadings of 20 January 2006 concerning the obligations the Convention imposes on Norwegian authorities.[f] It refers to the documents submitted by counsel concerning the registration of a blasphemy case against the complainant in Pakistan, and informs that the State party has accordingly initiated an investigation through the Norwegian embassy in Islamabad, to be completed before the hearing by the Court of Appeal.

10.2 The State party recalls that the complainant's request for asylum has been assessed pursuant to section 15 of the Norwegian Immigration Act, which offers at least the same protection against being sent to areas where one may be at risk of persecution as the provisions governing the same issue in the Convention against Torture, the European Convention on Human Rights and the United Nations Convention on Refugees. The State party argues that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured upon return to Pakistan. There have been numerous changes in the reasons advanced by the complainant for his claim of protection, as well as inconsistencies in his statements to the authorities. It therefore questions his credibility.

10.3 The State party notes that as of the date of its observations, the complainant's most important argument is that he is wanted by Pakistani authorities, because he is accused of blasphemy. This fact was not mentioned during the application for asylum, and the information later presented on this issue was contradictory and unreliable. In particular, the State party points out that this issue was not brought up until *after* UNE had made its final decision on 8 January 2004, and that it was contrary to information given by the complainant in his asylum interview. In addition, the State party was not able to deduce from the documents presented by the complainant that a criminal investigation had been initiated against him. In addition, and as a general observation, there is a widespread use of false or purchased documentation in connection with applications for asylum lodged by Pakistani applicants.

10.4 The State party refers, however, to recent documents[g] submitted by the complainant, which are specific about details of the alleged blasphemy case, and concedes that it cannot rule out that such a case is presently pending against him.

10.5 Regarding the complainant's fear of reprisals by MQM, the State party argues that MQM has been involved in little violent activity since 1998-1999 and that the present situation is very different from the early 1990s. Although the State party is aware that MQM extremists have to some degree participated in acts of political violence, it considers that the complainant is not at risk of being tortured by MQM. It argues that there is no reason to believe that retired military officers are particularly at risk with respect to reactions from the MQM extremists, and that the complainant in particular is presently at risk with regard to reactions by MQM. It refers to the fact that the complainant's military activities against MQM date back several years (1990-1994) and that he does not seem to have had any problems with MQM for several years. With regard to the fire of his house and his forced retirement in 1999, the State party does not consider that these incidents imply that the complainant has reason to fear persecution or torture from MQM.

10.6 With regard to the complainant's fear of reprisals by JEM, the State party questions the role played by him in the banning of the organization, and points out that he has not submitted any documentation to support this claim, even though he was requested to. In addition, he has not submitted any documentation to support his claim regarding the attack of his house or the kidnapping of his nephew. Finally the State party considers that the complainant is free to establish himself in any part of Pakistan, including areas where MQM and JEM do not have their primary scene of activity.

10.7 On the claim in relation to the blasphemy case, the State party explains the content of the Pakistani blasphemy laws, in particular sections 295, 296, 297 and 298 of the Penal Code, which address offences relating to religion.[h] According to the State party, no person has been executed by the Government of Pakistan under any of these provisions. However, some persons have been sentenced to death, or have died while in official custody. The State party is aware that complaints under the blasphemy laws have been used to settle disputes. They have also been used to harass religious minorities or reform-minded Muslims. However, most blasphemy complaints are directed against the majority Sunni Muslim community (309 complaints between 1986 and 2004, as opposed to 236 complaints against Ahmadis during the same period), and most of the cases are ultimately dismissed at the appellate level. However, the accused often remain in jail for years awaiting a final verdict.

10.8 With regard to the complainant's statement that his problems in Pakistan are partially caused and enhanced by the fact that he is an Ahmadi, the State party acknowledges that Ahmadis in Pakistan suffer from various restrictions of religious freedom and may suffer discrimination in employment and in access to education. It points out that the complainant has nonetheless held a high position in the Pakistani army.

10.9 The State party further points out that it is aware that the Ahmadis are subject to specific restrictions of law, and refers to section 298 (c) of the Penal Code, prohibiting Ahmadis to call themselves Muslims, to refer to their faith as Islam, to preach and propagate their faith, to invite others to accept the Ahmadi faith and to insult the religious feelings of Muslims. The punishment of violation of this section is imprisonment for up to three years and a fine. The State party emphasizes that it has carefully considered the fact that the complainant is Ahmadi. Even though the Ahmadis in Pakistan face legal barriers to the practice of their faith, and relations between religious communities in some areas may be tense, the State party does not consider that the complainant has reason to fear persecution within the meaning of the Convention upon return to Pakistan.

10.10 With regard to the claim that the complainant did not receive legal aid, the State party notes that, when he applied for asylum in Norway, he stated that he owned land in Pakistan and was entitled to receive a house in Lahore in 2005 through the military pension. Furthermore, he has been and is still represented, both in the case before the Committee and in the case pending at the national level, by an active and forceful lawyer.

10.11 To conclude, the State party invokes the Committee's jurisprudence according to which due weight must be given to findings of fact made by government authorities. It refers to general comment No. 1, paragraph 8, pursuant to which questions of credibility of a complainant, and the presence of factual inconsistencies in his claim are pertinent to the Committee's deliberations on the risk of torture upon return.

Complainant's return to the State party

11.1 On 5 April 2006, the State party submitted additional information on the merits. It refers to the initiation of an additional investigation by the Government further to new documentation submitted by the complainant.[i] It informs the Committee that the investigation was completed on 21 March and submits copy of the report. It resulted in the State party granting the complainant a residence permit, by decision of UNE of 30 March 2006, pursuant to section 8, second paragraph, of the Alien's Act with reference to section 15, first paragraph, first sentence, of the Act.[j] The decision is based on new information transpiring from the investigation in relation to the charges of blasphemy. UNE held that on the basis of the new information transpiring from the investigation, it could not be ruled out that the complainant may suffer unlawful criminal prosecution in Pakistan, and found that the requirements of section 15, first paragraph, first sentence were met. It granted him a residence permit for three years. However, UNE considered that the risk of persecution in Pakistan was too small for the complainant to fulfil the requirements necessary to be granted refugee status.

11.2 The State party considers that, as a result of UNE's decision, article 3 of the Convention is no longer an issue before the Committee, and requests the Committee to dispose of the case accordingly.

12.1 On 21 April 2006, counsel submitted her comments on the State party's observations of 5 April. She informs the Committee that the complainant was given the opportunity safely to return to Norway on 31 March 2006. According to the report prepared by the Norwegian embassy in Islamabad as a result of a fact-finding mission, the complainant is indeed accused of blasphemy, and the police has actively sought his arrest. The complainant states that he lived in hiding in a mud hut for the last months and that he has been very sick.

12.2 Counsel refers to UNE's decision of 30 March 2006 and points out that the decision insinuates that the complainant had himself initiated the blasphemy petition, and that the grant of stay was only made upon serious doubt. This assertion has no support in the Embassy report or in any other document, and the report states that there is no indication that the case is not genuine or that steps have been taken to influence the result of the verification process

12.3 Counsel recalls that UNE's decision of reversal is based on the Embassy report, which concluded that the petitioner in the blasphemy case had tried to register a criminal case against the complainant since 2002. This corresponds to the information provided by the complainant to the Norwegian authorities. Counsel states that, although the State party had knowledge of this fact, it disregarded it and refused to investigate, until a fact-finding mission was established with the result of the Embassy report. This report confirms that the complainant's statements were correct.

12.4 To support her claims on the pattern of abuse of rights, counsel submits new documents, including a letter from the Embassy of Pakistan of 10 February 2006, confirming the existence of an understanding between the State party and Pakistan, to the effect that Pakistani citizens should only be transported with valid passports.

Amended complaint

13.1 As a result of UNE's decision of 30 March 2006, counsel agrees that the complainant no longer has a legal interest in a decision on the State party's obligation, under article 3 of the Convention, to grant him protection, as he has been given permission to stay. Counsel thus withdraws this part of the complaint.

13.2 However, counsel maintains that there is still an interest in determining whether the State party violated article 3 by expelling the complainant on 21-22 September 2005 and by refusing to comply with the request for interim measures under rule 108. She claims compensation for the hardship endured by the complainant.

13.3 Counsel refers to article 22 of the Convention and maintains her claims that the State party did not deal in good faith with the Committee's request under rule 108 when it expelled the complainant to Pakistan.

Additional comments by the State party and the complainant

14. On 10 May 2006, the State party provided new factual information transpiring from the results of an inquiry directed to the Ahmadiya Foreign Missions Office in Rabwah (Ahmadiya Office). In a correspondence dated 6 April 2006 to the Norwegian Embassy in Islamabad, that the Ahmadiya Office indicated that, according to reports received from Islamabad and District Sheikhupura, the blasphemy case against the complainant was not genuine, and that it had in fact been engineered by the complainant himself. As a result of this, the complainant had been expelled from the Ahmadiya Community. As a consequence of this letter, UNE requested UDI to consider whether the residence permit granted in UNE's decision of 30 March 2006 should be revoked. The State party concludes by questioning the admissibility of the communication under article 22, paragraph 2, relating to the abuse of the right of submission of communications.

15.1 On 11 and 18 May 2006, counsel commented on the State party's new submission and requested interim measures of protection. She claims that the letter referred to by the State party has no evidentiary value in Norwegian courts, because the Norwegian Embassy in Islamabad concluded, in its report, that the case was genuine. She further argues that there are no grounds to invoke article 22, paragraph 2, as the request to withdraw the complaint has no basis in Norwegian administrative law, which requires that only *new* information may motivate such a request. UNE's decision of 30 March 2006, which allowed the complainant to return to the State party, was based on the "high probability that the complaint was engineered by the complainant himself". She thus argues that any ground for believing that he has engineered his own blasphemy case does not amount to new information.

15.2 Counsel claims that the letter from the Ahmadiya Office does not reflect the reality in relation to the case against the complainant. She indicates that the complainant has been in conflict with the leader of the Sheikuphura mission and that the letter may have been written for other motives. She submits copy of a letter she sent to the Ahmadiya Office on 18 May 2006, requesting the evidence that made it reach the conclusion that the complainant had engineered the blasphemy case himself. She further recalls that an arrest order was issued against the complainant, and that the blasphemy case is only one among many indicators that his life would be in danger in Pakistan. She submits copy of an affidavit by Colonel (Retd.) Muhammad Akram according to which the complainant, who, while in the army, took part in many operations against terrorists in Karachi, is at danger of being killed by terrorists.

15.3 Counsel indicates that the complainant's asylum case remains pending before the Borgarting Regional Court and that the complainant has still not been afforded legal aid. The pending proceedings relate to the author's appeal of the decision of 30 March 2006, on the grounds that he should be granted refugee status.

15.4 On 31 July 2006, the complainant filed additional comments on the State party's submission. He indicates that, on 5 July 2006, UDI decided in his favour by ordering that he be issued an alien passport. In respect of the letter issued by the Ahmadiya Office, he claims that he did not engineer the blasphemy case himself and that it resulted from an order of 23 December 2005 by the Session Judge of the District Court of Sheikhupura, who had examined a complaint against the author. He further argues that the Ahmadiya Community cannot itself investigate such cases, and that they provided their opinion rather than an account of the facts. He submits copy of a letter sent by his counsel on 2 June 2006 to the Norwegian Ahmadiya community, from which it transpires that the letter sent on 18 May had remained without reply. That letter further complains that the complainant was not afforded an opportunity to refute the allegations against him, and that he had not been directly informed that he had been expelled from the community. She finally asked a number of questions relating to the investigation and letter from the Ahmadiya Office.

15.5 On 16 August 2006, counsel commented further on the State party's submission, indicating that she is not aware whether UDI has opened a withdrawal case further to UNE's request to do so. She also indicated that the Norwegian Ahmadiya community had no knowledge of how the Ahmadiya Office in Rabwah came to the conclusion that the complainant had engineered his own blasphemy case, or of their decision to expel him from the community.

15.6 On 24 August 2006, the Secretariat asked the State party to inform the Committee of the outcome of UNE's request to UDI to consider reopening the case. No relevant information has been received from the State party.

15.7 On 7 November 2006 and 25 January 2007, the complainant and counsel submitted further information regarding their appeal of UNE's decision of 30 March 2006 in view of obtaining refugee status for the complainant. On 21 November 2006, the Borgarting Lagmannsrett confirmed UNE's decision not to grant the complainant refugee status.

Consideration of the merits

16.1 The Committee notes that the complainant has freely withdrawn that part of the complaint under article 3 relating to his protection by the State party, i.e. the issue whether his deportation to Pakistan in the future would constitute a violation of article 3 of the Convention. It further observes that the withdrawal of that claim relates to the grant of a residence permit and that the issue of the length of the permit is still pending in the domestic courts. Finally the Committee notes that there was no pressure on the complainant and accepts the withdrawal of that claim.

16.2 The issue before the Committee is thus whether the removal of the complainant to Pakistan despite the Committee's request for interim measures violated his rights under article 3 or 22 of the Convention. The Committee notes that on 2 April 2004, its Special Rapporteur on New Communications issued a request for interim measures of protection.[k] On 1 June 2004, the State party informed the Committee that it refused the Committee's request. However, at no time did it ask the Committee to lift the request.

16.3 The complainant was expelled on 21-22 September 2005, while the Committee's request for interim measures was still standing. The Committee notes that no information regarding the deportation was sent to it before 16 January 2006, i.e. after the Committee had adopted its admissibility decision of 14 November 2005, by the complainant's new counsel. The Committee recalls[l] that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention.

16.4 However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for three years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention.

16.5 In view of the fact that the complainant, who was not tortured during his stay in Pakistan, has returned to the State party, where he has received a residence permit for three years, the Committee considers that the issue whether his deportation to Pakistan constituted a violation of article 3 is moot.

17. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the deportation of the complainant to Pakistan despite standing interim measures, constituted a breach of article 22 of the Convention, as long as the complainant was under the jurisdiction of Pakistan from 22 September 2005 to 31 March 2006.

18. In the light of the above, the State party has already remedied this breach.

Notes

[a] The departure from Norway took place on 21 September and the complainant arrived in Islamabad on 22 September after a night-long stopover in Bangkok.

[b] See *T.P.S v. Canada*, communication No. 099/1997, paragraph 15.6, and *Cecilia Rosana Núñez Chipana v. Venezuela*, communication No. 110/1998, para. 8.

[c] The complainant explains that religious fundamentalists name the Ahmadi community "Qadiani".

[d] The complainant explains that in Pakistan, the immigration authorities and the Police department are different entities, which are not coordinated. Therefore, the immigration authorities did not have any knowledge of the pending criminal case against him.

[e] See paragraph 8.4.

[f] See paragraph 9.3.

[g] See paragraph 7.2.

[h] Section 295 (a) stipulates a maximum 10-year sentence for insulting the religion of any class of citizen. Section 295 (b) stipulates a sentence of life imprisonment for "whoever willfully defiles, damages, or desecrates a copy of the holy Koran". Section 295 (c) establishes the death penalty for directly or indirectly defiling the "sacred name of the Holy Prophet Mohammed". Section 298 (a) forbids the use of derogatory remarks about holy personages.

[i] See paragraph 10.4.

[j] Section 8, second paragraph: "Any foreign national has on application the right to a work permit or a residence permit in accordance with the following rules: (…). On the grounds of strong humanitarian considerations, or when a foreign national has a particular connection with Norway, a work or residence permit may be granted even if the requirements are not satisfied."

Section 15, first paragraph, first sentence: "Any foreign national must not pursuant to the Act be sent to any area where the foreign national may fear persecution of such a kind as may justify recognition as a refugee, or where the foreign national will not feel secure against being sent on to such an area."

[k] See paragraph 1.2.

[l] See, inter alia, *Brada v. France*, communication No. 195/2002, Views adopted on 17 May 2005, para. 13.4.

Communication No. 251/2004

Submitted by: A.A. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 19 July 2004 (initial submission)

Date of present decision: 17 November 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2006,

Having concluded its consideration of communication No. 251/2004, submitted by A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant, Mr. A.A., an Iranian national born in 1973, is the subject of an expulsion decision by Switzerland. Although he does not refer to any particular article of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, his allegations appear to raise issues under article 3 of the Convention. He is not represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

The facts as submitted by the complainant

2.1 According to the complainant, although he did not engage in any political activities in the Islamic Republic of Iran, he was repeatedly persecuted by the Iranian authorities because his family had been politically active against the regime of Ayatollah Khomeini, particularly through its support for the People's Mujahedin. In 1990, he and his cousin, as members of a family of political prisoners, conferred with the representative of the United Nations Commission on Human Rights during that representative's visit to the Islamic Republic of Iran. In April/May 1991, the complainant was detained for distributing tracts. He then spent two years in prison, where he was handcuffed and blindfolded and was "ill-treated with a razor blade".[a] His cousin was assassinated by the regime in place at the time.

2.2 The applicant states that, in 1993, he left prison and then performed his compulsory military service, until 1995. However, the Revolutionary Courts continued to harass him and summoned him on several occasions because of political activities conducted by members of his family. He adds that, during his military service, he was assigned to the political ideology section.

2.3 According to the complainant, on 15 February 1996, he obtained a passport and, a few days later, went to the border crossing of Sero with a view to entering Turkey. In the course of the customs formalities, the officials informed him that there were certain irregularities in his passport and that he was forbidden to leave the country.

2.4 The complainant thereupon returned to Tehran and, in early April 1996, was summoned to appear before the Revolutionary Court, where he was questioned about his military service, the reasons for his attempted departure from the country, his background and the members of his family.

2.5 On 21 May 1996, in response to a further summons from this Court, he was sentenced to six months' imprisonment, suspended for two years, 60 lashes and posting of a property bond for a three-year period.

2.6 On 17 July 1996, he made a third appearance in court, accompanied by his father, who had to provide security. After this third hearing, the author was sentenced to three months' imprisonment and 60 lashes, as well as payment of a fine. His father had to testify in writing that he was not involved in any political activity, in order to avoid his house being confiscated. The complainant was subsequently placed under close surveillance, with the authorities constantly attempting to pin new offences on him.

2.7 On 30 September 1999, the complainant left his country hidden in a container aboard a truck. He arrived in Switzerland in July 2000, and there joined other Iranian citizens struggling against the regime currently in power in the Islamic Republic of Iran. He participated in demonstrations organized by Iranian refugees. These activities in Switzerland were known to the Iranian authorities.

2.8 By decision of 10 July 2000, the complainant's application for asylum was rejected by the Federal Office for Refugees (ODR) - now the Federal Office for Migration (ODM) - which concluded that his allegations were inconsistent and that he had a low political profile, and ordered his expulsion from Swiss territory.

2.9 On 10 June 2004, the Swiss Asylum Review Board (CRA) rejected the complainant's appeal, considering that his statements contained many factual inconsistencies and contradictions and that his presentation of the facts was not credible. The Board therefore upheld the decision of the Federal Office for Refugees, ordering the complainant's return under threat of expulsion.

The complaint

3.1 The complainant states that the Swiss asylum authorities were wrong to consider that his allegations lacked credibility, since there are substantial grounds for believing that he would be subjected to torture if he were sent back to his country of origin, which would constitute a breach of article 3 of the Convention by Switzerland. He notes that he was detained and tortured in the Islamic Republic of Iran and that his cousin was assassinated by the regime of Ayatollah Khomeini because of his family's involvement in political activities directed against the regime at that time.

3.2 The complainant further states that his participation in political demonstrations and events abroad, as well as his illegal escape from the Islamic Republic of Iran, are decisive factors supporting suspension of his expulsion.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 6 September 2004, the State party declared that it did not contest the admissibility of the complaint and that it would pronounce on the merits. On 19 January 2005, the State party submitted observations on the merits. After recalling the Committee's jurisprudence and its general comment No. 1 on the implementation of article 3, the State party endorsed the grounds cited by the Asylum Review Board substantiating its decision to reject the complainant's application for asylum and upholding his expulsion. It recalled the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".

4.2 The State party observes that the complainant adduces no relevant new evidence that would enable him to challenge the Asylum Review Board's decision of 10 June 2004. It notes the factual inconsistencies and contradictions in the complainant's statements, emphasized by the domestic asylum bodies. For instance, the complainant alleges that he was ill-treated in prison between 1991 and 1993 but that, after being released, he nevertheless performed his military service in the army's political ideology section. Since the selection procedures for this section are known to be stringent, it is not credible that he should have performed his military service there, in view of his prior imprisonment and his family's alleged political activities. His explanation that the confusion occurred because of an error in transcribing his surname is not convincing.

4.3 After the complainant's first attempt to leave the country, proceedings were allegedly instituted against him in the Revolutionary Court of Tehran. Contrary to what he claims, however, the documents produced do not show that any penalty was imposed on him beyond the obligation to post a property bond. Moreover, these documents contain no precise indication concerning the grounds for the sentence said to have been handed down against the complainant by the Revolutionary Court. The internal bodies therefore concluded that grounds other than that of having concealed his detention from the military authorities were decisive in the complainant's alleged sentencing.

4.4 At each of the three hearings during the asylum procedure, the complainant gave a different version of the main reasons why he had left the Islamic Republic of Iran. Challenged about these discrepancies, he was unable to offer a plausible explanation. During the first phase of the procedure, the complainant claimed that his escape from the country was due essentially to the harassment to which he was subjected by the *basiji*, as well as to the political activities of some members of his family. In a later phase of the procedure, on the other hand, he claimed that his escape resulted from the assassination of a member of the *basiji*, the very people who had allegedly been harassing him.

4.5 The complainant's allegations concerning the ill-treatment to which he was subjected and his assignment to the army's political ideology section are not credible either. The explanation provided (confusion resulting from an error in the transcription of his surname) is unconvincing - particularly in view of the allegation that the complainant, who reportedly received his passport after the completion of his military service, was named on a list of persons forbidden to leave the country, a ban which was brought up against him at the border crossing. In the circumstances, spelling errors or the inclusion of the author's name in such a list should have constituted an obstacle to issuing the passport in the first place.

4.6 The State party says it does not know whether the fact of leaving his country of origin illegally would expose the complainant to the risk of being arrested on his return. It refers to the Committee's jurisprudence whereby the Convention affords no protection to complainants who merely invoke a fear of being arrested on their return.

4.7 As to the complainant's physical and psychological problems, the State party considers them to be connected with the sexual abuse to which he claims to have been subjected during childhood.

4.8 As regards the complainant's political activities in the Islamic Republic of Iran, the State party considers them to be very limited: they involve participation in a meeting with a United Nations representative in 1990 and distribution of tracts with his cousin in Semnan in 1991. Concerning the complainant's political activities in Switzerland, the State party notes that the Asylum Review Board examined in detail the question of whether a risk existed on that account and found that the evidence adduced by the complainant did not support a conclusion that the Iranian authorities were informed of these activities of his in Switzerland. It argues that the Iranian authorities focus primarily on persons presenting a particular profile by reason of activities going beyond normal conduct or representing a danger to the Iranian regime. The documents produced by the complainant do not show that he developed such a profile through his activities in Switzerland. The State party does not know of cases in which the Iranian authorities have brought proceedings against persons engaging in activities comparable to those of the complainant.

4.9 The State party concludes that there is nothing to indicate the existence of substantial grounds for fearing that the complainant would be exposed to a concrete and personal risk of torture on his return to the Islamic Republic of Iran.

Supplementary information from the complainant

5. In a letter of 25 April 2005, the complainant informed the Committee that, following the submission of an application for reconsideration on the basis of additional documents, the Federal Office for Migration was reconsidering his case.

Additional comments by the State party

6.1 On 9 May 2005, the State party in turn informed the Committee that the complainant had submitted an application for reconsideration to the Federal Office for Migration on 15 September 2004, and invited the Committee to suspend examination of the communication pending a ruling under the procedure.

6.2 On 9 May 2006, the State party informed the Committee that the Federal Office for Migration had rejected the application for reconsideration by decision of 28 December 2005. This decision was upheld by the Asylum Review Board on 24 April 2006. The State party noted that its request for suspension had become redundant and stated that it maintained its conclusions of 19 January 2005.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not contested admissibility. The Committee therefore considers that the complaint is admissible and proceeds to examine it on its merits.

7.2 The Committee must establish whether the return of the complainant to the Islamic Republic of Iran would constitute a breach of the State party's obligation, under article 3 of the Convention, not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 In order to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he were returned to the Islamic Republic of Iran, the Committee must take account of all factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. Accordingly, the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture on return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be considered at risk of being subjected to torture in specific circumstances.

7.4 The Committee recalls its general comment on the implementation of article 3, in which it states that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

7.5 In the present case, the Committee notes that the complainant's claim that he would run a risk of being tortured if he returned to the Islamic Republic of Iran is based on the fact that he was allegedly detained and tortured between May 1991 and August or September 1993; was subsequently harassed by the Iranian authorities, mainly because of the political activities of members of his family; and participated in activities in Switzerland directed against the current Iranian regime. In assessing the risk of torture in the present case, the Committee takes note of the complainant's allegation that he was tortured during his detention in the Islamic Republic of Iran and of the State party's view that this allegation lacks credibility.

7.6 The Committee also takes note of the complainant's allegations that he was constantly harassed by the Iranian authorities because of his family's political activities and that he would be at risk of being subjected to torture also on account of his political activities in Switzerland against the Iranian Government. In the Committee's view, however, the complainant has not demonstrated that his family's political activities against the regime were of such importance as to still present an interest for the Iranian authorities today, and has not adduced sufficient evidence to establish that his participation in demonstrations organized by Iranian refugees in Switzerland or his illegal escape from the Islamic Republic of Iran are decisive factors permitting the conclusion that he would be at personal risk of being subjected to torture if he returned to that country.

7.7 The Committee therefore considers that, having regard to the time that has elapsed since the events described by the complainant (more than 13 years), as well as the inconsistencies in his presentation, which he has not adequately explained, the information submitted by the complainant, and particularly the fact that he has not engaged in any sustained political activity either in the Islamic Republic of Iran or in Switzerland, is insufficient to support the claim that he would run a serious risk of being subjected to torture if he were returned to the Islamic Republic of Iran at this point in time.

7.8 The Committee concludes that, on the basis of all the information submitted, the complainant has not adduced sufficient evidence for it to consider that he would run a foreseeable, real and personal risk of being subjected to torture if he were returned to his country of origin.

7.9 Accordingly, the Committee, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's decision to return the complainant to the Islamic Republic of Iran would not constitute a breach of article 3 of the Convention.

Note

[a] According to a medical report by the Cantonal Psychiatric Service (KPD) of Basel, dated 1 July 2004, the author "suffered from a dissociative, trance-like condition, as a result of being subjected to sexual abuse during childhood, exacerbated by the fact that he had been ill-treated and had spent two years in prison". The report found that the author was severely traumatized and that his expulsion would entail a behavioural risk.

Communication No. 259/2004

Submitted by: M.N. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 10 December 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2006,

Having concluded consideration of communication No. 259/2004, submitted by M.N. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is M.N., a Bangladesh national born on 2 June 1967, who is currently awaiting expulsion from Switzerland. He claims that his deportation to Bangladesh would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 17 December 2004. At the same time the Committee, acting under rule 108, paragraph 1, of its rules of procedure, decided that interim measures of protection, as sought by the complainant, were not justified in the circumstances.

Factual background

2.1 The complainant states that he has been a member of the Jatiya Party (JP) in Bangladesh since April 1988 and acted as the JP's Organizing Secretary for ward No. 29. He claims to have been arrested on several occasions in 1991, 1993 and 1995 after participating in protest demonstrations organized by his party.

2.2 The complainant explains that in 1992 he secured a lease for the operation of a fish farm. Every year the lease had to be renewed and it was awarded to the highest bidder. On 20 January 2000 the complainant secured the lease in the face of competition from a bidder named E.S., a member of the Awami League (AL), another political party in Bangladesh. The complainant states that, on 15 or 16 March 2000, he received a letter from E.S. demanding that he pay a protection tax. Eight or nine days later, A., J. and C., members of the AL in the pay of E.S., forced their way into his shop and, since he refused to pay, beat him up. On 10 or 11 April 2000, the complainant found that all his fish were dead. After making his own inquiries, he reached the conclusion that A., J. and C. had poisoned the water. He tried to report these events to the police, but they refused to listen to him, allegedly because he was a member of the JP.

2.3 The complainant states that, in May 2000, on returning home after a JP meeting at its regional office in Mugda, he was arrested by the police and accused of possession of illegal weapons, which had allegedly been found on the first floor of the JP office in Mugda by E.S., A., J., C. and the police. He was detained from 5 May to 6 June 2000 in the central prison in Dhaka. He claims that, during his detention, he was tortured on three or four occasions. He was allegedly beaten with a stick and had boiling water injected into his nose and ears. He states that he is suffering from various physical and psychological after-effects, which have been confirmed by medical certificates: one of his eardrums has been perforated, he is suffering from chronic otitis, some of the bones in his ear have been destroyed, he has serious problems with his vocal cords, chewing is painful for him, he is suffering from depression and he has post-traumatic stress symptoms. Thanks to the intervention of his brother and other members of the JP, he was allegedly released on bail.

2.4 On 10 June 2000, the JP allegedly organized a protest demonstration in which the complainant took part. While returning to their homes, the members of his group were attacked by a group of AL supporters, one of whom was E.S. In the course of this incident the complainant allegedly managed to escape, but one of his friends was killed and another injured. The next day, he learned that E.S. had lodged a complaint against him for the murder of his friend and that the police were looking for him. For this reason, he left Dhaka and sought refuge with a friend in Gazipur.

2.5 The complainant states that, on 19 June 2000, the police, together with AL supporters, went to his home in Dhaka to try to find out where he was. They allegedly threatened and beat up his brother, causing grievous injuries which led to his losing an arm. They also stole money and jewels. After this incident, the complainant allegedly went to live with a cousin in Silhet. His brother and the leader of the JP tried to have the charges against him dismissed but were unsuccessful. His own lawyer admitted that he was certain the complainant would be found guilty and that he would do best to leave the country. A second lawyer, appointed by his brother and the leader of the JP, also expressed the view that it would be preferable for the complainant not to return to Bangladesh before the conclusion of the judicial proceedings.

2.6 On 13 September 2000, the complainant left Bangladesh and arrived in Switzerland on 21 September 2000. On the very day of his arrival he lodged an application for asylum. By a decision of 23 October 2002, the Federal Office for Refugees (ODR) - now the Federal Office for Migration (ODM) - rejected the application and ordered him to be deported from Switzerland. On 4 August 2004, the Asylum Review Board (CRA) rejected the complainant's appeal, thereby confirming ODR's decision to deport him.

2.7 The complainant maintains that CRA essentially bases its decision of 4 August 2004 on the lack of credibility of the alleged events, since they have not been confirmed by the investigations conducted by the Swiss Embassy in Bangladesh. He rejects this reasoning, stating that many pieces of documentary evidence submitted have been declared authentic by a notary, that they are very detailed and that they uphold his account in all respects. He expresses surprise at the lack of detail in the inquiry by the Swiss Embassy, and at the lack of explanation concerning the procedure followed and the sources questioned, and concludes that the result is incomplete.

He also notes that CRA considered as contradictory the fact that he should have submitted attestations by two lawyers, whereas he had only mentioned one, and explains that, when he submitted his application for asylum in Switzerland, he had simply not been aware that his brother had appointed a second lawyer to represent him and that he had convinced the first lawyer to continue to represent him. He considers that this fact in no way detracts from the credibility of his allegations. As to CRA's statement that the complainant and his group were not attacked by an AL group while returning from the demonstration on 10 June, but that the two groups set on each other, the complainant states that it was difficult, once the fighting had started, to say who had attacked whom and which group had had to defend itself; however, that too in no way detracted from the credibility of his account.

2.8 The complainant notes that CRA considered that it is impossible for JP members to still be persecuted, given the fact that JP is now represented in the Government and that, if they were being persecuted, the higher courts would have the necessary independence to punish such persecution. He rejects this argument, stating that, even though they are represented in the Government, JP members can be persecuted since they still constitute a political minority. He adds that the two criminal proceedings initiated against him are very probably linked to his political activities. In reply to CRA's argument that even if the events had taken place in the manner described by the complainant, he should not have left the country but should have sought assistance from the Bangladesh authorities, he states that he tried to lodge a complaint but the policemen in question ignored him. Lastly, he claims that, even if the higher courts are independent in Bangladesh, as stated by CRA, he would still have to spend several years in prison, with a high risk of being tortured, before gaining access to the higher courts.

The complaint

3.1 The complainant asserts that there are substantial grounds for believing that he would be subjected to torture if he was returned to Bangladesh and that his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

3.2 Given the two criminal proceedings initiated against him, he fears that he would be arrested as soon as he set foot in Bangladesh and would be subjected to torture, especially since he has already been tortured while he was being held in prison in Dhaka. He states that the Swiss authorities have not called his political activities into question and adds that JP members are still being persecuted, despite the fact that their party is a member of the coalition Government.

3.3 Lastly, the complainant maintains that in Bangladesh torture is still commonly used by the police. Furthermore, many people allegedly die in prison as a result of torture and the Bangladesh authorities undertake no investigation and no action to remedy this problem. Nor is any action taken to prevent torture. In addition, there is the problem of the lack of independence of the courts, in particular the lower courts.

State party's observations on admissibility and the merits

4.1 By a note verbale of 15 February 2005, the State party declared that it would not contest admissibility. An extension for the submission of its observations was granted and on 5 July 2005 it submitted observations on the merits.

4.2 The State party examined the validity of CRA's decision in the light of article 3 of the Convention, the Committee's jurisprudence and its general comments. It notes that the complainant confines himself to bringing to the Committee's attention the grounds invoked before the Swiss authorities and provides no new element tending to call into question the CRA's decision of 4 August 2004. It also emphasizes that the complainant does not explain to the Committee the inconsistencies and contradictions contained in his allegations and noted by the Swiss authorities, but on the contrary confirms them.

4.3 The State party recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".[a] The State party points out that the complainant makes a vague reference to "the various annual reports of different human rights organizations" to illustrate the human rights situation in Bangladesh, and in particular the frequent and unpunished use of torture by the security forces. The State party recalls that, when considering a number of communications from complainants invoking the risk of being tortured in the event of return to Bangladesh, the Committee has taken note of the overall human rights situation in Bangladesh, and in particular the repeated cases of police violence against prisoners and political opponents, and also the existence of acts of torture attributed to the police and violent clashes between political opponents.[b] The State party notes that, in order to assess the personal risk of being tortured in the event of return, notably of complainants opposed to the AL, the Committee has, inter alia, deemed as pertinent the change of government after the 2001 election, the fact that the AL is currently in the opposition, the fact that there is no longer a great risk that someone may be harassed by the authorities at the instigation of members of this party and the fact that members of one of the coalition parties in power have nothing to fear from the political groups making up the coalition.[c]

4.4 As to the risk of the complainant being arrested because of any criminal charges against him and his allegation that he would inevitably be subjected to torture while in prison, the State party refers to the Committee's consistent jurisprudence whereby the fact that torture is practised in places of detention does not, as such, warrant the conclusion that there has been a violation of article 3 if the complainant has not demonstrated that he personally is at risk of being tortured.[d] The State party considers that the situation in Bangladesh as described by the complainant does not in itself constitute sufficient grounds for concluding that he would be at risk of being subjected to torture on his return to that country.[e]

4.5 The State party recalls the Committee's jurisprudence whereby the torture or ill-treatment suffered by the complainant in the past constitutes one of the elements that must be taken into account in assessing the risk of the complainant being subjected to torture or ill-treatment in the event of return to his country. The State party notes that the Swiss authorities have not, at any stage of the proceedings, contested the serious physical and psychological disorders from which the complainant is suffering and which he has substantiated by means of medical certificates. They nevertheless considered that those disorders are related to causes other than those adduced, since the author's allegations concerning ill-treatment during his supposed detention in May and June 2000 in Dhaka central prison are not credible. The State party adds that, even if the complainant's allegations were credible, he does not adduce any fact to justify a conclusion that he would still be at risk of being tortured in the event of his return.

4.6 The State party is not unaware of the existence of strong rivalries between the leaders of the two dominant political parties, namely the AL and the Bangladesh National Party (currently supported, inter alia, by the JP). It notes that the Swiss authorities have not questioned the complainant's membership of the JP or his activities within that party. It nevertheless considers that he is not at risk of being subjected to treatment contrary to article 3 of the Convention because of his political activities. Furthermore, it notes that he has not adduced any argument based on political activities he may have undertaken outside his State of origin.

4.7 The State party draws attention to the numerous inconsistencies in the complainant's account, inconsistencies which were mentioned in CRA's decision. It points out that the complainant does not explain to what extent his alleged arrests in 1991, 1993 and 1995 would still be relevant today in exposing him to a risk of torture. Similarly, no explanation is given as to why the complainant would be at particular risk of being persecuted when he is a member of a legal political party which participated in the elections and is represented in the Government. The State party adds that the complainant provides no information that might cast doubt on the results of the investigations made by the Swiss Embassy in Dhaka. In its view, the fact that a notary has confirmed the authenticity of the documents submitted cannot be considered as decisive, especially since the complainant does not clarify the contradictions between his allegations concerning the events of June 2000 and the police report; according to the latter, a police officer lodged the criminal complaint whereas the complainant claims that it was E.S. who lodged the complaint.

4.8 The State party expresses surprise at the fact that the investigations conducted by the Swiss Embassy in Dhaka did not yield any indication of possible criminal proceedings against the complainant, even though, according to the complainant, a criminal complaint for illegal possession of weapons was lodged in May 2000, he was detained from 5 May to 6 June 2000, he was released on bail in June 2000, and he was reported to the police for murder in June 2000. It also notes that the circumstances of the complainant's defence are not clear and that he does not explain the contradictions noted by the CRA. The State party points out that the second lawyer is the same person as the notary confirming the authenticity of certain documentary evidence and that he submits different information according to his role. The State party recalls the Swiss authorities' conclusion that the allegations of the existence of an outstanding criminal inquiry concerning the complainant are not credible. It affirms that, if these allegations were credible, in accordance with the Committee's jurisprudence, article 3 of the Convention would afford no protection to a complainant who simply alleged that he was afraid of being arrested on return to his country.

4.9 Lastly, although it in no way contests the existence of the after-effects suffered by the complainant, the State party endorses CRA's conclusions, considering that, in the light of the numerous contradictions relating to essential points in the complainant's account, it is highly probable that these after-effects were not caused by acts of torture but were rather the consequences of an accident or fights. The State party concludes there is no indication of serious grounds for supposing that the author would be specifically and personally at risk of torture on his return to Bangladesh.

Author's comments

5.1 By a letter of 29 September 2005, the complainant reiterates that, contrary to the opinion of the State party, there is for him a personal, actual and serious risk of being subjected to torture if he is deported to Bangladesh. He explains that his purpose in describing in the communication the general human rights situation in Bangladesh was not in itself to establish a sufficient ground for concluding that he would be at risk of being tortured on his return to his country, but to clarify the context in which the events which put him personally at risk are situated.

5.2 The complainant emphasizes that the change of government after the 2001 election and its relevance to the assessment of the risk of political persecution do not apply to his situation. He thus points out that he worked for the "Ershad" faction within the JP, which is still in opposition to the current Government, and consequently its members are still liable to arrest by the police and torture. He says that this fact has been confirmed by the Committee in its decision of 21 May 2005.[f] Furthermore, he claims that he is still wanted by the police and that, despite the fact that he left the country five years ago, his children and brothers are still being threatened by his opponents. He adds that his brother, who had been looking after his children, has received such serious threats that he has had to flee and leave the children in the custody of an uncle, and that there has been no news of him since. He maintains that his uncle is in turn under threat and that the police have refused to protect his family because they are still looking for him. He encloses a letter from his uncle confirming his statements. He recalls that the State party has not contested his political activities and that, contrary to the State party's claims, he does not maintain that he is simply afraid of being arrested on his return, but has serious grounds for believing that he would be tortured.

5.3 The complainant recalls that he is wanted for murder and that, consequently, he would be arrested and imprisoned as soon as he arrived in Bangladesh since he fled after he had been released on bail. He considers that, since he was tortured at the time of his most recent arrest, he would be tortured again because the situation has deteriorated since that time. Moreover, he doubts whether the judges would conduct a fair trial in his case since his party faction is still in opposition to the Government and he would have to fight charges when in fact he had begun by running away. He recalls that, in accordance with paragraph 6 of the Committee's general comment No. 1, the risk of torture does not have to be highly probable, but must simply go beyond mere theory or suspicion.

5.4 The complainant encloses a new medical certificate confirming that his psychological condition is consistent with his allegations of torture. He acknowledges that, like the other medical certificates already submitted, this certificate does not prove that he has been tortured, but it does make the allegation very probable. He recalls that the State party does not contest the serious physical and psychological disorders from which he is suffering; he nevertheless contests the State party's attribution of the disorders to causes other than the alleged torture. As to the result of the investigations by the Swiss Embassy in Dhaka, the complainant emphasizes that they do not provide answers to all the questions asked and that there is no indication of the inquiries on which the results are based. He observes that, according to the State party, the only deficiency in the notarized documents which he submitted, and which have not been deemed false by the State party, consists in the fact that they do not tally with the results of the Embassy's investigations.

5.5 The complainant explains the apparent contradiction concerning the source of the complaint for murder lodged in June 2000: he had heard that E.S. had lodged that complaint against him, but since he has never seen the complaint, it is possible that it was recorded not under the name of E.S., but under that of a police officer in order to give the case a more official character.

5.6 The complainant considers that, in relation to the circumstances of his defence, there are no contradictions. The fact that his first lawyer wrote in November 2002 that for political reasons he could no longer conduct his defence and advised the complainant to leave the country does not exclude him from representing him at a later stage. As to his second lawyer, the fact that he did not give his details in an identical manner as a notary and as a lawyer does not undermine the credibility of the complainant's allegations. Lastly, in support of the credibility of his statements, the complainant submits a photo of his brother in which it is clear that he has lost an arm. He concludes that it is not acceptable for the State party to concentrate on a few contradictions which do not relate to essential points and do not concern the other allegations made. He reiterates that, given the torture he has suffered in the past and his political activities, it is highly likely that he would again be tortured on his return to Bangladesh, which would constitute a violation by the State party of article 3 of the Convention.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. It accordingly finds the complaint admissible and proceeds to consideration of the merits.

6.2 The Committee must determine whether, by sending the complainant back to Bangladesh, the State party would fail to meet its obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 In order to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Bangladesh, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a pattern of gross, flagrant or mass violations of human rights. However, the aim is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a particular country does not as such constitute sufficient reason for determining that a particular person would be in danger of being tortured on return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be considered as being at risk of being tortured in specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, namely that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable"
(A/53/44, annex IX, para. 6).

6.5 In the present case, the Committee considers that the main reason why the complainant is afraid that he will be tortured if he returns to Bangladesh is that he was allegedly tortured there while being held in Dhaka prison in May and June 2000 and that he would be at risk of being arrested on his return because of the criminal charges against him. The Committee notes that the State party has not contested the complainant's political activities in Bangladesh. However, as regards the physical and psychological after-effects from which the complainant is suffering, the State party considers that they were caused by other events - accident, fighting - and not by the acts of torture as described by the complainant. The Committee has taken note of the medical reports furnished by the complainant attesting to the various problems from which he is suffering, but nevertheless considers that they do not warrant the conclusion that the after-effects described were caused by acts of torture. It also considers that, as the State party maintains, the complainant has not proved conclusively that the injuries he sustained resulted from actions by the State.

6.6 The Committee also takes note of the State party's argument that, since the Awami League is currently in the opposition, there is no longer a high risk of the complainant being harassed by the authorities at the instigation of members of this party. The State party further asserts that the complainant has nothing to fear from the political groups currently in power since he is a member of one of the coalition parties. While taking note of the complainant's explanation that he is a member of a faction of the Jatiya Party opposed to the faction currently in the Government, the Committee does not consider that this in itself would warrant the conclusion that the complainant is at risk of being persecuted and tortured by supporters of the Jatiya Party faction currently in the Government or the Bangladesh National Party.

6.7 Lastly, regarding the complainant's allegation that he risks being arrested because of the criminal proceedings against him and that in prison he would inevitably be subjected to torture, the Committee notes that the fact that torture is practised in places of detention does not, in itself, warrant the conclusion that there would be a violation of article 3, given that the complainant has not shown that he is personally at risk of being subjected to torture. The Committee recalls that, in conformity with its general comment No. 1, the burden is on the complainant to present a convincing case, to establish that he would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. In the present case, the Committee takes note of the State party's argument that, on investigation, its embassy in Dhaka found no trace of criminal proceedings pending against the complainant. The Committee also considers that the complainant has not sufficiently substantiated his allegations that there are two criminal proceedings pending against him. In any event, it is inappropriate to refer to the possibility of arrest on his return to Bangladesh for ordinary offences with which he is charged. The Committee further considers that the complainant has failed to indicate the reasons for which he reportedly tried to lodge a complaint with the Bangladesh authorities and was forced to leave the country.

6.8 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Bangladesh would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

6.9 Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Bangladesh would not constitute a breach of article 3 of the Convention by the State party.

Notes

[a] The State party cites communications No. 94/1997, *K.N. v. Switzerland*, decision of 19 May 1998, para. 10.5; and No. 100/1997, *J.U.A. v. Switzerland*, decision of 10 November 1998, paras. 6.3 and 6.5.

[b] Communications No. 220/2002, *Ruben David v. Sweden*, decision of 2 May 2005; No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005; No. 223/2002, *S.U.A. v. Sweden*, decision of 22 November 2004; No. 226/2003, *T.A. v. Sweden*, decision of 6 May 2005; No. 243/2004, *M.S.A. v. Sweden*, decision of 6 May 2005.

[c] Communications No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005, para. 8.6; and No. 243/2004, *M.S.A. v. Sweden*, decision of 6 May 2005, para. 4.2.

[d] Communication No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005, para. 8.7.

[e] Communication No. 106/1998, *N.P. v. Australia*, decision of 6 May 1999, para. 6.5.

[f] Communication No. 226/2003, *T.A. v. Sweden*.

Communication No. 262/2005

Submitted by: V.L. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 12 January 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 2006,

Having concluded its consideration of complaint No. 262/2005, submitted to the Committee against Torture by V.L. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is V.L., born in 1946, a Belarusian citizen currently living in Switzerland, pending her return to Belarus. She does not invoke specific provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but her complaint appears to raise issues under article 3 thereof. She is not represented by counsel.

1.2 On 14 January 2005, the Committee, through its Rapporteur on New Complaints and Interim Measures, transmitted the complaint to the State party and requested it, under rule 108, paragraph 1, of its rules of procedure, not to return the complainant to Belarus while her case is under consideration by the Committee. The Rapporteur indicated that this request could be reviewed in the light of new arguments presented by the State party. The State party acceded to this request by note of 25 February 2005.

Factual background

2.1. The complainant's husband stood in local elections in Belarus in 1995 and in 2000. In a letter to the editor of a newspaper, he criticized the president of the country. He was then interrogated several times by the office of security and the police. He was also attacked by four unknown men in April 2000. The police advised him to cease his political activities. He left Minsk and stayed with relatives from July 2000 to June 2001. He left the country on 7 June 2001 and went to Belgium where he applied for asylum. His application was rejected and he travelled to Switzerland on 18 December 2002. In the meantime, the complainant herself remained behind in Belarus and was frequently interrogated about her husband's whereabouts. On 12 September 2002, her passport was taken away from her. She left the country on 16 December 2002 and joined her husband in Switzerland on 18 December 2002.

2.2 The complainant, together with her husband, applied for asylum in Switzerland on 19 December 2002. Both based their claims on the alleged political persecution of the husband by the Belarusian authorities. These claims were not considered to be credible by the Swiss Federal Office for Refugees (BFF), which considered that the documents submitted by the claimants were not genuine. Consequently, the applications were rejected on 14 August 2003 and the complainant and her husband were ordered to leave the country by 9 October 2003.

2.3 On 11 September 2003, the complainant and her husband appealed to the Swiss Asylum Review Board (ARK), which rejected the appeal on 15 September 2004. The complainant requested a revision of the decision on 11 October 2004, in which she mentioned for the first time that she had suffered sexual abuse by members of the police ("Miliz"). She urged the Swiss authorities to reconsider her asylum application on its own right, rather than as part of her husband's claims, explaining that they now lived separately. It was only after the couple's arrival in Switzerland that the complainant informed her husband of the sexual abuses. He reacted with insults and humiliating remarks and forbade her to mention the sexual abuses to the Swiss authorities. By letter dated 15 October 2004, ARK requested further information on the request for revision because the reasons invoked for the revision of the appeal decision were not sufficient. On 21 October 2004, the complainant elaborated on the grounds for revision. She now claimed that prior to her departure from Belarus, she had been interrogated and raped by three officers of the police who wanted information about the whereabouts of her husband. These officers also beat her and penetrated her with objects. A subsequent medical examination in a hospital confirmed bruises and damage to her sexual organs. The complainant was then treated medically and could not return to her workplace for more than three weeks.

2.4 Following this incident, the complainant complained to the officer-in-charge of the department whose officials had sexually abused her. Thereafter, she received threats from several officers of this department. One officer followed her home, asking her to withdraw her complaint. There were constant night visits to her home and searches by the police. One day, the same officers who had previously raped her, kidnapped her in front of her office, and drove her to an isolated place where she was raped again. The officers threatened to mutilate and kill her. On 12 September 2002, she was called to the police offices, where her passport was taken away. Following these events, she became depressed and went into hiding. The threats and intimidations, coupled with the previous sexual abuses, motivated her flight from Belarus.

2.5 The complainant claims that her failure to mention the rape in her initial interview with BFF was due to the fact that she had considered it humiliating and an affront to her personal dignity. Furthermore, the psychological pressure from her husband prevented her from mentioning the sexual abuses. She explained that her husband had disappeared in October 2004 and his whereabouts are unknown to her. Now that he had left the country, she was however willing to provide details about the events described above and a medical certificate.

2.6 In its decision of 1 December 2004, ARK acknowledged that in principle, rape was a relevant factor to be considered in the asylum procedure, even when reported belatedly, and that there may be psychological reasons for victims not to mention it in the first interview. However, the complainant's claims did not appear plausible to ARK, since, according to it, the complainant had neither substantiated nor proven psychological obstacles to at least mentioning the rape in the initial interview. Nor had her story or her behaviour been otherwise convincing. ARK also expressed suspicion about the "sudden ability of the complainant to provide details about the alleged rape". It was unconvinced that the complainant would be threatened with persecution or inhuman treatment upon return, and concluded that there were no legal obstacles to her return to Belarus.

2.7 On 7 December 2005, the complainant sent to ARK a medical report demonstrating that she had suffered sexual abuses before she left Belarus. By letter of 14 December 2005, ARK replied that her case was closed. She wrote again to ARK on 7 January 2005 explaining why she disagreed with its decision of 1 December 2004. She was informed on 11 January 2005 that she would be removed from the country on 20 January 2005.

The complaint

3. The complainant submits that, from the documents submitted by the complainant, it is clear that she justifiably fears persecution by the police in Belarus. She does not invoke specific provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but her complaint appears to raise issues under article 3.

State party's submissions on the admissibility of the communication

4.1 By note verbale of 25 February 2005, the State party challenges the admissibility of the complaint. It submits that the complainant's letter dated 12 January 2005 cannot be considered to be a complaint within the meaning of article 22 of the Convention. It recalls that under rule 107, paragraph (a), of the Committee's rules of procedure, the complainant must claim to be a victim of a violation by the State party concerned of the provisions of the Convention. Under paragraph (b), the Committee shall ascertain that the complaint is not an abuse of the Committee's process or manifestly unfounded. It notes that the complainant merely forwards the documents concerning her asylum application and requests the Committee "to render me the help and assistance in […] the decision of my question of protection", rather than identifying any error on the part of the national authorities when confirming the removal decision. It argues that the complainant failed to demonstrate that she would face a risk of torture upon her return to Belarus. In the absence of any claim of a violation, the State party considers it impossible to comment on the complainant's submission.

4.2 The State party concludes that the complainant's letter cannot be considered as a communication within the meaning of article 22 of the Convention. In the event that it was nevertheless considered as such, it invites the Committee to declare it inadmissible for failing to disclose violations of the Convention, or as amounting to an abuse of the right of submission, or as being manifestly unfounded under rule 107, paragraph (b), of the rules of procedure.

Complainant's comments on the State party's submission

5. By letter of 12 March 2005, the complainant presents her comments on the State party's submission on the admissibility of the communication. She provides more detail on the sequence of events leading to her departure from Belarus. She also sends a medical report dated 4 July 2002 of the 7th urban polyclinic in Minsk. The report states that the complainant had suffered a trauma and damage to her sexual organs.

State party's submissions on the merits of the communication

6.1 By note verbale of 24 June 2005, the State party reaffirms its challenge to the admissibility of the communication; subsidiarily, it submits the following arguments on the merits. The State party first recalls its obligations under article 3 of the Convention, and recalls that the Committee has specified the conditions of application of this provision in its jurisprudence and in its general comment No. 1 of 21 November 1997.

6.2 Under article 3, paragraph 2, of the Convention, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The State party submits that it must be determined whether the individual concerned would be *personally* at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of human rights violations in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country.[a] Consequently, additional grounds must be adduced to show that the risk of torture can be qualified as "foreseeable, real and personal".[b] The State party notes that the situation in Belarus cannot of itself constitute a sufficient ground for concluding that the complainant would be in danger of being subjected to torture upon her return to that country.[c] The State party contends that the complainant has not demonstrated that she would face a "foreseeable, real and personal" risk of being subjected to torture upon her return to Belarus.

6.3 Under general comment No. 1, whether the complainant has been tortured or ill-treated in the past must be taken into account so as to assess the risk of being subjected to torture upon return to her country. The complainant claims that she was raped several times in 2002, the first time by three police officers as part of an interrogation as to the whereabouts of her husband and the second, as a result of her reporting the first rape to the authorities. She fears that her return would come immediately to the knowledge of the police and that she would be ill-treated again, or even raped. In order to support the claims that she was raped in 2002, she sent to the Committee a medical report dated 4 July 2002 of the 7th urban polyclinic in Minsk. For the State party, it is surprising that the complainant did not present this essential piece of evidence in the ordinary procedure, nor in the procedure for revision before ARK. According to the complainant, because she was expecting a new interview, she sent this medical report only after reception of the decision of ARK of 1 December 2004. The State party does not consider this explanation to be convincing. It notes that, on the one hand, ARK asked the complainant to specify her request for revision and to make it more substantial, and that, on the other hand, the complainant herself replied that she found it necessary to provide the required information in writing. In these circumstances, the State party recalls that the complainant and her husband provided false and/or falsified means of evidence in the ordinary asylum procedure, and that the husband's claim of persecution was considered not credible by the national authorities. It considers that the medical report cannot support the rape allegation.

6.4 According to general comment No. 1, the complainant's previous political activities in the country of origin must be taken into account in order to assess the risk of her being subjected to torture upon return to that country. The State party notes that the complainant has not been politically active in Belarus. The sole political activities which were invoked were those of her husband, who allegedly stood in the local elections in 1995 and 2000, and criticized the Head of State. The State party concludes that the complainant has not established that she would face a risk of torture because of her own political activities.

6.5 With regard to the credibility of the complainant, the State party notes that she mentions grounds not invoked before the national authorities during the asylum procedure, and that she made reference to the sexual abuses by the police only in her request for revision of 11 October 2004. On explicit request of ARK, she completed her request for revision on 21 October 2004. It is only on this occasion that she specified that members of the police raped her several times in 2002 and that she was subsequently seriously threatened by the police, notably because she reported the crime. The complainant has never supported her allegations with evidence. According to the complainant, she did not dare mentioning the rapes during the ordinary procedure because her husband forbade her to talk about them. The State party argues that, even though this explanation could be accepted for the period preceding the complainant's separation from her husband, it cannot be considered as convincing for the subsequent period. In particular, it cannot explain why the complainant did not provide any evidence to ARK during the revision procedure. Furthermore, the evidence provided by the complainant and her husband to support their claims during the asylum procedure were essentially false and/or falsified. In the light of the above, the State party doubts the authenticity of the medical report provided in the present procedure only on 12 March 2005.

6.6 Finally, the State party submits that the complainant's claims are full of factual inconsistencies, which undermines her credibility. According to her, the rapes she was subjected to in 2002 had a direct link with the political activities of her husband. However, the national authorities have found the allegations related to her husband's persecution not to be credible. Since the complainant has always claimed that her husband's activities were the sole cause for her own persecution, these allegations are without any basis.

6.7 The State party concludes that nothing indicates that there are serious grounds to fear that the complainant would be seriously and personally exposed to torture upon her return to Belarus.

Additional comments by the complainant on the State party's submission

7.1 By letter of 28 July 2005, the complainant responds that although she was not an active political figure, she supported the political activities of her husband, and that her belonging to a family where there is opposition to the Government makes her politically active. In response to the State party's contention that she has not mentioned the threat of arrest upon return to Belarus in the initial asylum application, she claims that she had mentioned that risk in her first interview upon arrival in Switzerland on 14 February 2003, but also at several other times. She adds that these comments were sent to the Committee in the annexes to her initial communication.

7.2 The complainant argues that there is a consistent pattern of gross, flagrant or mass violations of human rights in Belarus and that she is thus afraid of facing persecution upon her return. She mentions that opponents to the authorities regularly disappear in Minsk and Vitebsk, and that many people are wrongly imprisoned. Regarding the question whether there is a real and personal risk of being subjected to torture upon her return, she recalls that she has received on several occasions specific threats to put her in prison and even, to kill her. She adds that, upon her return to Belarus, she would have to go to the police for registration of her personal documents, which is compulsory. Consequently, members of the police would learn immediately that she was back. In order to demonstrate that she faces a real risk of ill-treatment, she recalls that there have been numerous night visits of members of the police to her home, searches, interrogations, acts of violence against her which were corroborated by a medical report and that her political activity consisted in distributing pre-election propaganda materials.

7.3 With regard to the delay in presenting the medical report to the national authorities of the State party, the complainant claims that the report was still in Belarus. When her case was reconsidered, her daughter found the medical report at the complainant's home in Belarus and sent it to the complainant by fax on 17 November 2004.

7.4 With regard to the absence of persecution of the complainant's husband, the complainant argues that the State party is mistaken, and that, if there were no threats against her husband, he would have returned to Belarus. Instead, he is now in Belgium.

7.5 On the issue of credibility of her claims, the complainant explains that in her application for revision dated 11 October 2004, she mentioned only briefly the sexual abuses she had suffered because she was expecting to be called for a new interview. Concerning the availability of means of evidence to support her allegations, she recalls that the complaint she made to the police has been suspended because she had left the country. The documents concerning her complaint are confidential and she cannot have access to them from Switzerland.

Issues and proceedings before the Committee

8.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the complainant has sufficiently substantiated the facts and her claims, for purposes of admissibility. With regard to the State party's argument that the complainant's letter does not constitute a complaint within the meaning of article 22 of the Convention, the Committee considers that while the complainant does not specifically mention article 3 of the Convention in her initial submission, she has made clear that she should not be returned to Belarus because she faces a risk of further instances of rape by militia authorities upon return. Considering that she was not represented by counsel and in the light of the seriousness of the allegation, the Committee recalls that it has been its constant practice to treat similar communications as complaints within the meaning of article 22 of the Convention.[d] It therefore considers that the communication is admissible and proceeds to an examination on the merits of the case.

8.2 The Committee must determine whether the forced return of the complainant to Belarus would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Belarus. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of its determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 The Committee is aware of the poor human rights situation in Belarus. The police alleged to have harassed, sexually abused and raped the complainant acts under the Ministry of the Interior and have been responsible for numerous instances of torture across the country, including against persons who participated in alternative election campaigns. The Special Rapporteur on the situation of human rights in Belarus has noted several attacks on members of the political opposition.[e] The Committee itself has cited numerous allegations of torture and ill-treatment by Belarus authorities, the absence of an independent procurator, the failure to conduct prompt, impartial and full investigations into claims of torture, and the absence of an independent judiciary.[f] The Special Rapporteur on Violence against Women has noted the increasing number of reports of violence against women including rape in Belarus, and the "rather frequent" reports of abuse, including sexual attacks, by female detainees.[g] According to data released by the Belarus Ministry of Labour and Social Security in 2004, over 20 per cent of women reported experiencing sexual abuse at least once. In the first 10 months of the year 2005, the Ministry of Interior reported a 17 per cent increase in reports of rape from the year before.[h]

8.5 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk need not be highly probable, but it must be personal and present.

8.6 As to the State party's assertion that the earlier finding that some of the original documents submitted in the joint asylum application were falsified, and that this undermines the complainant's credibility, the Committee considers that the evidence that the husband, and not the complainant, was in control of what was presented in support of the original joint asylum application, cuts against attributing responsibility to her for such defects on this basis alone. As to the State party's claim that the medical report from the hospital summarizing and supporting the allegation of rape is also falsified, the Committee notes that the State party concluded this on the sole ground that the earlier documents submitted by the husband in support of the joint asylum application were deemed to be falsified (see paragraph 6.5 above) and has not adduced any further evidence or argument to support this claim. Noting that the date and the detailed information about the severe injury to the complainant's sexual organs by insertion of blunt objects contained in the medical report from Belarus correspond to the information contained in her submissions, the Committee does not question the authenticity of this document.

8.7 As to the State party's argument that the complainant has not established that she would face a risk of torture because of her own political activities, the Committee observes that while the complainant is now separated from her husband, this will not prevent the authorities from harming her. This complainant has explained that she participated in distributing pre-election propaganda when in Belarus. The complainant is now separated but not divorced from her husband; to the authorities, she remains a source of contact and a means of pressuring him. Moreover, according to a recent United States State Department Human Rights Country Report, cases of harassment of divorced women because of their former husband's activities are not unknown in Belarus.[i] In any case, while the complainant contends that she was detained and raped the first time because of her husband's political activities in Belarus, the Committee notes that she was raped for a second time because she had made a complaint about the initial rape. Upon return to Belarus, the complainant would thus be at risk of ill-treatment independently of her relationship to her husband. Her report against the police accusing them of night visits, searches, violence and rape could easily make the complainant vulnerable to reprisals by the police anywhere in Belarus. As the Special Representative of the Secretary-General on human rights defenders has argued, women human rights defenders face gender-specific forms of hostility, harassment and repression such as sexual harassment and rape.[j] The police in Belarus function in a highly uniform and hierarchical system with a top-down rule; in current political conditions, it is hard to assess that any one location is safer than another. For all those reasons, the complainant would be of interest to the local police.

8.8 The State party has argued that the complainant is not credible because the allegations of sexual abuse and the medical report supporting these allegations were submitted late in the domestic proceedings. The Committee finds, to the contrary, that the complainant's allegations are credible. The complainant's explanation of the delay in mentioning the rapes to the national authorities is totally reasonable. It is well known that the loss of privacy and prospect of humiliation based on revelation alone of the acts concerned may cause both women and men to withhold the fact that they have been subject to rape and/or other forms of sexual abuse until it appears absolutely necessary. Particularly for women, there is the additional fear of shaming and rejection by their partner or family members. Here the complainant's allegation that her husband reacted to the complainant's admission of rape by humiliating her and forbidding her to mention it in their asylum proceedings adds credibility to her claim. The Committee notes that as soon as her husband left her, the complainant who was then freed from his influence immediately mentioned the rapes to the national authorities in her request for revision of 11 October 2004. Further evidence of her psychological state or psychological "obstacles", as called for by the State party, is unnecessary. The State party's assertion that the complainant should have raised and substantiated the issue of sexual abuse earlier in the revision proceedings is insufficient basis upon which to find that her allegations of sexual abuse lack credibility, particularly in view of the fact that she was not represented in the proceedings.

8.9 With regard to the State party's argument that there are many inconsistencies in the complainant's claims, the Committee notes that this argument has not been substantiated since the State party has not specified what these inconsistencies were.

8.10 In assessing the risk of torture in the present case, the Committee considers that the complainant was clearly under the physical control of the police even though the acts concerned were perpetrated outside formal detention facilities. The acts concerned, constituting among others multiple rapes, surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender. Therefore, the Committee believes that the sexual abuse by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities. Moreover, the authorities in Belarus appear to have failed to investigate, prosecute and punish the police for such acts. This failure to act increases the risk of ill-treatment upon the complainant's return to Belarus, since the perpetrators of the rapes have never been investigated and can mistreat the complainant again in all impunity. There is thus substantial doubt, based on the particular facts of this case, as to whether the authorities in Belarus will take the necessary measures to protect the complainant from further harm.

8.11 In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Belarus.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention.

10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the Views expressed above.

Notes

[a] See communication No. 94/1997, *K.N. v. Switzerland*, decision adopted on 19 May 1998, para. 10.2.

[b] Ibid., para. 10.5. See also communication No. 100/1997, *J.U.A. v. Switzerland*, decision adopted on 10 November 1998, paras. 6.3 and 6.5.

[c] See also communication No. 106/1998, *N.P. v. Australia*, decision adopted on 6 May 1999, para. 6.5.

[d] See for instance communication No. 248/2004, *A.K. v. Switzerland*, decision adopted on 8 May 2006.

[e] See the Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin (E/CN.4/2006/36) of 16 January 2006, paras. 51-54. See also the report of the Working Group on Arbitrary Detention, mission to Belarus (E/CN.4/2005/6/Add.3) of 25 November 2004, paras. 58-60.

[f] See concluding observations of the Committee against Torture: Belarus, 20 November 2000 (A/56/44, paras. 40-46), para. 45 (d).

[g] See the report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy: international, regional and national developments in the area of violence against women, 1994-2003 (E/CN.4/2003/75/Add.1) of 27 February 2003, para. 1901.

[h] As cited in the United States Department of State Country Report on human rights practices (2005), 8 March 2006.

[i] See the United States Department of State Country Report on human rights practices (2005), 8 March 2006.

[j] See the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2002/106) of 27 February 2002, para. 91.

Communication No. 265/2005

Submitted by:	A.H. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	8 February 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2006,

Having concluded its consideration of complaint No. 265/2005, submitted to the Committee against Torture by A.H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Committee against Torture.

1.1 The complainant is A.H., an Azeri national born in 1971, currently detained in Sweden awaiting deportation to Azerbaijan. He claims that his return would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel. The Convention entered into force for Sweden on 26 June 1987.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 8 February 2006. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Azerbaijan while his case was pending before the Committee. The State party acceded to such request.

The facts as presented by the complainant

2.1 The complainant belongs to the Talysh minority group in Azerbaijan. After his graduation in mechanical engineering in Russia and upon completion of his military service in Germany, he joined the Talysh separatist movement led by Alakram Hummanov, which strived to establish a Talysh republic. In 1994, he left this group and moved to Baku, where he lived until he fled to Sweden.

2.2 The complainant declares to have been an active member of the Azerbaijani Democratic Party (ADP), a registered opposition party to the current regime. He contends that his political activities were carried out in the district of Khatai and included, among others, organizing demonstrations against the regime. He claims to have been seen on television on several occasions in the framework of these activities.

2.3 In 2001, the complainant was summoned by the police in several occasions and interrogated about the leader of the Talysh separatist movement, Hummatov. On 15 June 2001, policemen dressed in plain clothes searched the complainant's home in Baku and seized some documents and recordings. He was arrested and taken to premises of the Ministry of National Security in Baku, where he was repeatedly beaten. He was then taken to a "police house" and locked in a cell in the basement, where he was kept for approximately a year. He contends that, during his detention, he was beaten on numerous occasions and that he was not allowed to go out or speak to anyone and was never informed of the duration of his detention. He further contends that his case was never tried by a court and that no lawyer was appointed to him.

2.4 In May 2002, he fell ill and was brought to a KGB hospital, which also treated prisoners. The complainant states that, while he was in hospital, his father and the secretary-general of ADP, Sardar Jalaloglu, organized his escape and obtained, through bribery, a party membership card and a driver's licence in his name. A visitor delivered these documents to the complainant.

2.5 On 14 November 2002, the complainant walked out of hospital dressed in military clothes, with the help of a soldier connected to Jalaloglu, while guards were busy with phone calls and visitors. That night he crossed the Azeri border to the Russian region of Dagestan. He arrived in Sweden via Kaliningrad on 19 November 2002, with a forged Dutch passport. The day after his arrival, he applied for asylum.

2.6 By decision of 4 July 2003, the Swedish Migration Board ("Migrationsverket") rejected the complainant's application. The Board denied the existence of pronounced discrimination against the Talysh population in Azerbaijan and questioned the complainant's credibility as to how he had managed to escape from hospital and how his driver's licence had been issued.

2.7 On 8 July 2003, the complainant appealed to the Aliens Appeals Board.
On 10 October 2003, this Board received a letter from the German authorities, in reply to a request for information made under the Dublin Convention, where it was stated that the complainant had applied for asylum in Germany on 25 July 1995.

2.8 On 10 October 2003 and 3 March 2004, the complainant presented submissions to the Board, enclosing medical reports from the Crisis and Trauma Centre at Danderyd hospital, issued on 18 and 19 February 2004, respectively. These reports confirmed that he had been subjected to acts of torture as described by him, including systematic beatings, electroshocks and sitting on iron bars for a long time. It concluded that the complainant's scars and injuries corresponded to acts of torture suffered in 2001.

2.9 In a further submission to the Board, on 17 December 2004, the complainant stated that his brother had arrived in Sweden and applied for asylum and that Jalaloglu had been arrested in Azerbaijan and the complainant, among others, was being searched by the Azerbaijani authorities. A wanted notice, including a photo of the complainant, had been issued by the Ministry of Internal Affairs, Department of Criminal Investigations of Baku, and posted at police stations around Baku. He was allegedly accused of "belonging to ADP and of having left the country and instigating rebellion for having disseminated oppositional ideas". He contended that his brother had informed him that their father had also been arrested in Baku two months after the complainant's departure from Azerbaijan.

2.10 On 4 February 2005, the Aliens Appeals Board rejected the complainant's appeal. While it accepted that the complainant had been imprisoned and subjected to torture as indicated in the medical reports, it considered that "these incidents could not be attributed to Azeri authorities but should be viewed as criminal acts performed by certain individuals overstepping their powers". It further questioned the duration of the complainant's detention and the circumstances of his escape and found that he had not been able to demonstrate neither that he was wanted on political grounds nor that he had been politically active at such high level that he would risk being persecuted by Azeri authorities.

The complaint

3. The complainant maintains that, if he were to be returned to Azerbaijan, he would risk detention and torture again, on grounds of his tight connection with the ADP and especially considering that a "Wanted" notice has been issued and distributed in police stations around Baku. He submits that the current political situation in Azerbaijan was particularly tense due to the parliamentary elections of 6 November 2005. In this regard, over 300 opposition activists, inter alia from ADP, were arrested on 21 May 2005 in an attempt to crush political opposition. In the light of the facts and the evidence submitted, the complainant claims that his deportation to Azerbaijan would constitute a violation of article 3 of the Convention.

State party's submissions on admissibility and merits of the complaint

4.1 By letter of 10 May 2005, the State party contests the admissibility of the communication, arguing that it does not meet the basic level of substantiation required for the purposes of admissibility. On a subsidiary basis, it claims that the case is without merit. It argues that, although numerous human rights abuses are still being reported, Azerbaijan has made some progress towards improving the human rights situation since it became a member of the Council of Europe and has signed major international and European human rights treaties. In particular, the State party notes that some political prisoners have been released, including Hummatov, the leader of the former Talysh separatist group. Therefore, the human rights situation in Azerbaijan in itself does not suffice to conclude that the complainant's forced return would violate article 3.

4.2 The State party further contends that the national authorities are best positioned to assess the author's credibility. The Migration Board held two interviews with the complainant and concluded that, while his statements relating to his personal circumstances and his membership in the Khatai branch of ADP were confirmed as correct by the Swedish Embassy in Ankara, other statements were not considered credible. The State party notes that, although the complainant's ADP membership card and his driver's licence were considered valid, the way in which these documents were delivered to the complainant was not credible. The State party notes that the secretary-general of ADP, Jalaloglu, who had allegedly helped the author to escape from hospital, later declared that he did not know the author. According to the Embassy's interpreter, the "Wanted" notice is false and only consists of a "chaotic composition of words full of mistakes". It adds that, according to the information obtained from the Ministry of Internal Affairs, the complainant has never been subject to any criminal investigations nor has he been imprisoned.

Complainant's comments on State party's observations

5.1 By letter of 14 July 2005, the complainant submits that he encountered difficulties during interviews with the Swedish Migration Board, due to the fact that the first interview was conducted without an interpreter. He therefore acknowledges that some minor contradictions may have arisen. In particular, he did not understand whether he had previously applied for asylum in a State party to the Dublin Convention. He confirms that he applied for asylum in Germany in 1995, where he stayed for six months, and that he returned to Azerbaijan before any decision had been adopted by the German authorities.

5.2 He questions the way in which the Government of Sweden obtained Jalaloglu's declarations, especially considering that he was in prison at the time where the investigations were carried out. He reiterates that he knew Jalaloglu personally and that it was precisely him who had helped him to escape from hospital, through a soldier connected to Jalaloglu. He insists that both his driver's licence and ADP membership card could be obtained through bribery, with Jalaloglu's help. He claims that Azerbaijan is a corrupt country and that bribery is common.

5.3 He notes that, as his imprisonment was illegal, it is unlikely that Azeri authorities would acknowledge that he had ever been imprisoned. As to the "Wanted" notice, the complainant insists that it is a genuine document issued by the Ministry of Internal Affairs and containing his photo, probably obtained from an old passport.

5.4 He concludes that, on account of his tight link with ADP and his past record of imprisonment and torture, he would be detained and tortured if returned to Azerbaijan, especially since he has information about the persons that detained him in 2001.

Additional comments by the State party on the author's comments

6.1 By letter of 28 September 2005, the State party states that the Azeri administration is bureaucratic and prefers to register a person detained on false charges than to keep him secretly detained without any record of his detention. In this regard, it states that there are no reasons to doubt the information obtained from the Ministry of Internal Affairs of Azerbaijan.

6.2 It further maintains that the Swedish Embassy is assisted, in investigations, by people who are well acquainted with the Azeri judicial system and have contacts with the relevant authorities, including the Ministry of Internal Affairs. One of these persons allegedly met Jalaloglu personally, who declared that he did not know the complainant.

6.3 By letter of 16 November 2005, the State party submits that, since a new remedy to obtain a residence permit came into force under temporary legislation, the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or at least be adjourned awaiting the outcome of the application of this new procedure. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until a new Aliens Act entered into force on 31 March 2006. These temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order had been issued. According to the new chapter 2, section 5 (b), of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to assume that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

6.4 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It shall further be taken into account whether the alien has committed crimes and a residence permit may be refused for security reasons.

6.5 No expulsion order will be enforced while a case is still under consideration of the Migration Board. Decisions made by the Migration Board under chapter 2, section 5 (b), as amended, are not subject to appeal. Applications lodged with the Migration Board under the new legislation, which are still pending by 30 March 2006, will continue to be handled according to the temporary amendments of the 1989 Aliens Act. The same applies to cases that the Board has decided to review on its own initiative.

6.6 By letter of 29 March 2006, the State party informs the Committee that, after having examined whether the complainant qualified for a residence permit in Sweden under the above-mentioned temporary amendments, the Swedish Migration Board found, by decision of 3 March 2006, that the complainant was not entitled to such a permit.

Additional comments by the complainant on the State party's submission

7. By letter of 11 April 2006, the complainant notes that the State party has not provided sufficient information on how the Swedish Embassy in Ankara carried out its investigation. It further notes that there is a risk that his identity as an asylum-seeker in Sweden was disclosed to the Azeri authorities. He adds that his wife and two sons live under very poor conditions in Baku and suffer reprisals from the Azerbaijani authorities.

Additional submissions from the State party

8. On 5 July 2006, the State party provided the Committee with a translation of the "Wanted" notice. It notes that the author submitted this document incomplete to the Swedish Migration Board and that, therefore, it has not been able to provide a full copy of this document.

Additional comments by the complainant on the State party's submission

9.1 By letter of 14 July 2006, the author stresses that the State party has confirmed his being a member of the Khatati branch of ADP. He notes that the membership card produced was also confirmed to be valid by the State party. This card was however issued while he was at hospital, with the help of Sadar Jalaloglu and his father. He contends that it was not difficult to obtain such a card with Jalaloglu's help. The author received this card just before fleeing to Sweden. He adds that he is well acquainted with Jalaloglu, who is a good friend of his father. He met Jalaloglu several occasions through his father and he has even a dedicated book by him. He contends that he has been in contact with Jalaloglu, who acknowledged that he was questioned by Azerbaijani police and denied knowing him because Jalaloglu himself was in trouble with the authorities and did not want to worsen his situation.

9.2 The author notes that, according to the interpreter of the Swedish Embassy in Ankara, the "Wanted" notice was incomprehensible. However, this notice has in fact been translated and seems both logic and comprehensible.

Additional submissions from the State party

10. On 28 September 2006, the State party notes that, in order to obtain a translation of the notice, it requested assistance from the Swedish Embassy in Ankara. This Embassy reported that, for the purposes of investigating matters relating to Azerbaijan, it generally engages an international organization operating in Baku. This organization has in turn several legal consultants linked to its office, who can provide information obtained from Azerbaijani authorities. The investigations of the Embassy undertaken with the assistance of legal consultants lead to considering the "Wanted" notice as a false document. It reiterates that it consists of a "composition of words that is void of meaning" and that no information has been found with the relevant national authorities to corroborate that the author has been charged with a criminal offence. It adds that it has not been possible to find a second page of the document because it is false and that, in any case, the burden of proof relies on the author, who should be the one to produce a full copy of this document. It adds that the English translation of the notice does not offer support to the complainant's claim that he is wanted in Azerbaijan for being a Talysh member of ADP, having left the country illegally and instigating rebellion.

Issues and proceedings before the Committee

11.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In the present case the Committee further notes that domestic remedies have been exhausted since the decision adopted by the Swedish Migration Board on 3 March 2006 under the temporary amendments, and that the complainant has sufficiently substantiated his claim for purposes of admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration of the merits.

11.2 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

11.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Azerbaijan, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

11.4 The Committee recalls its general comment No. 1, on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

11.5 The Committee notes that the State party has questioned the author's credibility with regard to his position within ADP, his imprisonment and the State party's responsibility for his torture, based on expert evidence obtained by its consular services in Ankara. This evidence included, inter alia, an interrogation of the ADP leader, Sardar Jalaloglu, while at prison, who declared not to know the author. The State party has further questioned the authenticity of the wanted notice allegedly issued by the Ministry of Internal Affairs, an incomplete copy of which was submitted by the complainant to the Swedish Migration Board.

11.6 Bearing in mind the above and in light of first hand information before the Committee, it notes that, although it is undisputed that the complainant was a member of ADP and that he was subjected to acts of torture in 2001 and 2002 as confirmed by the medical reports submitted by him, he has failed to provide evidence about his high position within the party or the conduct of any political activity of such significance that he would face foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan. The Committee further notes that the author has not been able to provide, as requested by the Committee, a full copy of the wanted notice presented to the Swedish Migration Board. Additionally, it notes that the notice presents numerous incoherences and does not reveal, in any case, that the complainant is being searched in Azerbaijan. The Committee considers that the complainant has failed to disprove the State party's findings in this regard, and to validate the authenticity of the document in question. It recalls its jurisprudence that it is for the complainant to collect and present evidence in support of his account of events.[a]

11.7 With regard to the general human rights situation in Azerbaijan, the Committee takes note of the State party's argument that, although human rights abuses are still being reported in Azerbaijan, this country has made some progress towards improving the human rights situation since it joined the Council of Europe and that efforts are being made towards releasing political prisoners.

11.8 In light of all the above, the Committee is not persuaded that the complainant would face a real, personal, and foreseeable risk of torture if deported to Azerbaijan.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Azerbaijan would not constitute a breach of article 3 of the Convention.

Note

[a] *Vid. S.L. v. Sweden*, communication No. 150/1999, Views adopted on 11 May 2001, para. 6.4; and *M.Z. v. Sweden*, communication No. 256, Views adopted on 17 May 2006, para. 9.5.

Communication No. 268/2005

Submitted by:	A.A. (represented by counsel)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	2 February 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2007,

Having concluded its consideration of complaint No. 268/2005, submitted to the Committee against Torture by A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Committee against Torture.

1.1 The complainant, A.A., a Pakistani citizen, resides in Switzerland and is the subject of an order for deportation to his country of origin. He does not invoke any particular provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but his complaint seems to raise issues under article 3. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party in a note verbale dated 20 April 2005. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Pakistan pending the Committee's consideration of his complaint.

The facts as submitted by the complainant

2.1 The complainant is the local head of the Muslim League/Youth Organization (PML-N), a political opposition party, in Sialkot, Pakistan. He has held this post since 5 March 2004. On 3 May 2004, he took part in a demonstration against the construction of a road in Sialkot and was arrested by the police. He was released the next day.

2.2 On 6 August 2004, he organized a protest march from Sialkot to the town of Attock. Some 3,000 militants took part in the march. When they arrived at Attock, the police used tear gas and firearms to disperse the demonstration. One person was killed. The police held the complainant responsible for this death.

2.3 Shortly afterwards, one of the complainant's uncles, a well-known lawyer, asked him to leave Pakistan because a criminal investigation had been instituted and the police had issued a warrant for his arrest. The complainant left Pakistan on 12 August 2004 and arrived in Switzerland on 27 August 2004.

2.4 The complainant filed a request for asylum in Switzerland on 28 August 2004; the request was rejected by the Federal Office for Refugees on 8 September 2004. He appealed the decision on 8 October 2004. The Swiss Asylum Review Board (ARK) rejected the appeal on 2 December 2004. On 21 January 2005, the complainant requested a review of the decision. On 26 January 2005, the Review Board rejected the request and the complainant was instructed to leave Switzerland.

The complaint

3.1 The complainant maintains that, if he were sent back to Pakistan, he would be exposed to a serious risk of torture and ill-treatment in Pakistani prisons because of the criminal proceedings currently under way for a murder that he did not commit.

3.2 The Swiss authorities have not challenged the facts as described above, or the allegation that lower levels of prison and judicial authorities in Pakistan are corrupt. In view of the heavy workload of the Pakistani courts, the complainant would remain in detention for years and would be subjected to torture and ill-treatment by prison guards and investigators. The Swiss authorities have also not taken issue with the allegation that, if the complainant returned to Pakistan, he would have to undergo a very long period (several years) of pretrial detention, and that detention conditions would be difficult and cruel (frequent acts of torture, lack of medical care, inadequate sanitary conditions, violence without any protection from the prison authorities, overcrowded cells, abuse by prison guards). The complainant belongs to a minority political party that has no influence with the police and the courts, the lower levels of which are corrupt.

3.3 According to the complainant, the Swiss authorities expect that he will be acquitted by the higher courts in Pakistan. Even if that were the case, the complainant would not be able to avoid the risk of being subjected to torture or inhuman treatment in the local prisons during the (long) years of criminal proceedings before the case was brought before a "higher and more independent court" that would acquit him.

3.4 The complainant has submitted copies of two letters to prove his allegation that the Pakistani authorities are still looking for him. The first letter, dated 4 April 2005, is signed by Mr. N.A. Butt, a lawyer of the Sialkot High Court. He states that he is personally acquainted with the complainant and affirms that the complainant "is implicated in a case of murder trumped up by the police because of the influence of the current regime". He adds that the local police is "everywhere to arrest him wherever he may be in Pakistan". He concludes that the complainant's life is in danger and advises him to remain abroad. The second letter, dated 11 April 2005, is signed by Mr. Khawaja Mohammad Asif, a member of the National Assembly of Pakistan. He claims that the complainant "is a senior official of the young people's branch of the Pakistani Muslim League". He maintains that, since his party was in power at the time of the 1999 military coup, all its members have become the target of persecution by the State. For this reason, the leaders of the party have gone into self-imposed exile in Saudi Arabia, and many party members have fled abroad. Mr. Asif himself was arrested for five months (October 1999-February 2000) and was never brought before a judge. According to him, the complainant's life and liberty are in grave danger if the complainant returns to Pakistan, particularly because the trumped-up case against him is still pending and he risks imprisonment and torture.

State party's observations on admissibility

4. In a note verbale dated 1 June 2005, the State party declares that it does not challenge the admissibility of the request.

Additional information from the complainant

5. On 5 July 2005, the complainant transmitted to the Committee an official summons dated 26 April 2005, inviting him to appear before the judge for the crime that he allegedly committed.

State party's observations on the merits

6.1 In a note verbale dated 12 October 2005, the State party maintains that the complainant confines himself to reiterating the reasons that he invoked before the Swiss authorities. He does not adduce any new and relevant information that would allow it to question the Swiss Asylum Review Board's decision of 2 December 2004.

6.2 The State party recalls that the complainant must prove that there is for him a personal, actual and serious risk of being subjected to torture if he is deported to his country of origin. It also recalls that, even if there exists a consistent pattern of gross, flagrant or mass violations of human rights in the State of origin, it must nevertheless be established whether the complainant would "personally" be in danger of being subjected to torture upon his return to his country. The mere fact that the complainant is likely to be arrested and tried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture.[a] Likewise, the existence of torture in detention as such does not justify a finding of a violation of article 3, given that the complainant has not demonstrated how he personally would be at risk of being tortured.[b] In the present case, the State party notes that the PML-N is a legal political party. It cannot therefore be assumed that criminal proceedings against the complainant or his arrest would be used as a pretext for persecuting him for his political beliefs. Moreover, the higher posts in State institutions are not held solely by supporters of the parties in power. Opposition parties are also represented, particularly in the courts. Even if, at the local level, police inquiries do not always meet the usual standards of a State based on the rule of law, it is undeniable that higher criminal prosecution bodies as well as the courts respect, in principle, the rules of procedure.

6.3 Consequently, the situation in Pakistan, as described by the complainant, does not in itself make it possible to conclude that he would be at risk of being tortured upon his return to that country.[c] This finding is particularly valid since the criminal inquiry to which he could be subjected has a legitimate objective, namely to establish criminal responsibility for the unnatural death of a person. The complainant has at no time attempted to defend himself before the Pakistani authorities against the accusations made against him. Regardless of the dubious authenticity of the "official summons" of 26 April 2005, the summons appears to indicate that the arrest warrant against the complainant is a direct consequence of his flight.

6.4 The State party recalls that the torture or ill-treatment that the complainant may have suffered in the past constitutes one of the elements that must be taken into account in evaluating the complainant's risk of being subjected to torture or ill-treatment if he returned to his country. In the present case, at no time in the procedure has the complainant claimed to have been tortured. This applies in particular to his only detention, from 4 p.m. on 3 May 2004 to 4 May 2004, following a demonstration against the opening of a road. He was promptly released because he protested against his arrest.

6.5 With regard to the complainant's political activities within or outside his State of origin, the State party recalls that the Swiss authorities have not questioned the complainant's membership of PML-N or his activities in that party. It is highly likely that the complainant engaged in political activities at the local level in Pakistan. The foregoing information demonstrates that the complainant does not risk being subjected to treatment contrary to article 3 of the Convention because of his political activities. The complainant has not adduced any argument based on political activities in which he may have engaged outside his State of origin.

6.6 The State party recalls, as the Swiss Asylum Review Board pointed out in its decision of 2 December 2004, that the credibility and authenticity of the documents of Pakistani origin should, in general, be described as highly dubious, since it is well known that such documents can be bought without difficulty. These doubts pertain, in particular, to the three letters that, surprisingly, were produced only in the present procedure. Moreover, the State party notes with some surprise that the complainant attempted to prove the existence of criminal proceedings against him by producing an essentially internal document (the "First Information Report", or FIR) whereas he has not provided other official documents that are easily accessible to an accused person, such as, for example, the indictment or the arrest warrant. It is also surprising to note that the First Information Report blames the complainant for having caused the death of a person during the events of 6 August 2004, whereas the "official summons" which, moreover, is the only official document that refers to the existence of an arrest warrant for the complainant is dated 26 April 2005, or eight and a half months later. Regardless of these inconsistencies relating to substantive points in the complainant's claims, the State party is of the view that whether or not the complainant can be believed is not a determining factor in the present case. As the domestic authorities have pointed out, the documents submitted by the complainant only confirmed claims that were not useful in determining whether the complainant ran a real and personal risk of being subjected to torture if he returned to Pakistan.

Author's comments on the State party's observations

7.1 On 22 December 2005, the complainant transmitted to the Committee an annual report of the Human Rights Commission of Pakistan on conditions in Pakistani prisons. On 3 November 2006, the complainant transmitted to the Committee a note from Mr. Khawaja Mohammad Asif, a member of the National Assembly of Pakistan, stating that, if the complainant returned to Pakistan he would be arrested and imprisoned for political reasons because of an offence that he had not committed, and that conditions of detention in Pakistani prisons are such that imprisonment constitutes torture or at least inhuman treatment.

7.2 In a letter dated 19 January 2007, the complainant reiterates that detention conditions in Pakistani prisons are inhuman. Acts of torture, brutality and ill-treatment, as well as periods of pretrial detention that can last up to five years are frequent, as indicated in the report of the

Human Rights Commission of Pakistan. The State party does not submit any evidence to the contrary and has not taken into account the systematic human rights violations in Pakistani prisons. In cases of imminent arrest, the only way to avoid being tortured in a Pakistani prison is to leave the country. Persons who opt to defend themselves in the courts instead of fleeing abroad resign themselves to the fact that they will be tortured in prison.

7.3 Political activists, particularly PML-N activists like the complainant, are at risk of becoming victims of illegal detention. The State party recognized this fact in its observations of 12 October 2005. This is all the more probable since the authorities have the pretext of putting the complainant in prison because of the violent death of a person during the demonstration organized by the complainant. As the complainant was aware that he risked being tortured, he requested his uncle, who is an influential person, to arrange his release from prison and enable him to leave the country immediately.

7.4 The complainant considers that the State party's attitude is contradictory. On the one hand, the State party does not challenge the fact that the complainant is a member of PML-N, that the activities in question did indeed take place and that the complainant played a major role in the organization of a political demonstration that resulted in a murder. On the other, the State party would like to believe that the complainant runs no risk of torture even though it is aware that political activities in general involve an inherent risk of torture in Pakistan. None of the Swiss authorities ever tried to make a serious assessment of the complainant's credibility on the basis of forensic psychiatric criteria. Thus, the complainant's credibility is not seriously in question in the light of the fact that even the State party has explicitly accepted the facts put forward by the complainant.

7.5 The complainant noted that the State party admits that, in general, it does not attach much credibility to documents from Pakistan. It is therefore not only reasonable and not in any way surprising that such documents were not submitted during the asylum procedure.

Issues and proceedings before the Committee

8.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not challenged admissibility. It therefore considers that the communication is admissible and proceeds to an examination of the merits of the case.

8.2 In accordance with article 3, paragraph 1, of the Convention, the Committee must determine whether or not there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon his return to Pakistan. To do this, the Committee must take account of all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, it must be established whether or not the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general observation on the implementation of article 3, according to which the existence of a risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and that, in any case, "the risk does not have to meet the test of being highly probable".[d]

8.4 In the present case, the Committee notes that the complainant has never been subjected to torture or ill-treatment in Pakistan. He was detained for only one day, from 3 to 4 May 2004, at a police station, and he does not claim to have been a victim of ill-treatment.

8.5 The Committee takes note of the information supplied by the complainant, according to which he could be subjected to torture if he were arrested and placed in pretrial detention. An English translation of a police report dated 6 August 2004 and of an official summons dated 26 April 2005 seem to confirm that the complainant is suspected of murder, that he fled the scene of the crime and that he is still being sought by the authorities. While acknowledging that these documents are authentic, the Committee nevertheless recalls that the mere risk of being arrested and tried is not sufficient to conclude that there is also a risk of being subjected to torture.[e] With regard to the 2004 annual report of the Human Rights Commission of Pakistan on conditions in Pakistani prisons, the Committee notes that the information contained in the report is of a general nature and does not demonstrate that the complainant himself would be in danger of being subjected to ill-treatment if he were arrested and imprisoned. As for the note from Mr. Khawaja Mohammad Asif of 16 October 2006 (see paragraph 7.1 above), the Committee observes that this note mainly concerns Mr. Asif's detention between October 1999 and February 2000: it does not demonstrate that the complainant himself would be in danger of being arrested and tortured by the Pakistani authorities. The Committee also observes that the author of this note is a politician who holds a more important position than the complainant.

8.6 In the light of the foregoing, the Committee considers that the complainant has not sufficiently demonstrated the existence of substantial grounds for believing that his return to Pakistan would expose him to a real, specific and personal risk of torture, in the meaning of article 3 of the Convention.

9. Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Pakistan would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] See communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5; and communication No. 65/1997, *I.A.O. v. Sweden*, Views adopted on 6 May 1998, para. 14.5.

[b] See communication No. 221/2002, *M.M.K. v. Sweden*, decision adopted on 3 May 2005, para. 8.7.

[c] See communication No. 106/1998, *N.P. v. Australia*, Views adopted on 6 May 1999, para. 6.5.

[d] A/53/44, annex IX, para. 6.

[e] Communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5.

Communication Nos. 270 and 271/2005

Submitted by:	E.R.K. and Y.K. (represented by counsel)
Alleged victim:	The complainants
State party:	Sweden
Date of the complaint:	19 May 2005 (270/2005) and 12 June 2005 (271/2005) (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2007,

Having concluded its consideration of complaint Nos. 270 and 271/2005, submitted to the Committee against Torture on behalf of E.R.K. and Y.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainants are Messrs. Y.K. (communication No. 270/2005),[a] and E.R.K. (communication No. 271/2005), who are brothers and Azerbaijani nationals. They claim to be victims of violations of article 3 by Sweden of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel.

1.2 On 13 and 29 June 2005, respectively, the Rapporteur for New Complaints and Interim Measures requested the State party not to deport Y.K. and E.R.K. to Azerbaijan while their cases are under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 16 November 2005 and 16 March 2006, the State party acceded to the Committee's request.

1.3 On 30 April 2007, during the thirty-eighth session of the Committee against Torture, the Committee decided to join the consideration of these two communications.

The facts as presented by the complainants

2.1 Y.K. was a student at the Azerbaijan State Marine Academy in 1999. His brother E.R.K., who is a painter, graduated from the Azerbaijan State University of Culture and Art on 28 June 1994. From 1992 to 2002, he worked as a teacher at the Gymnasium of Art in Baku. Neither of the brothers was ever engaged in any political activity. However, their brother, E.N.K. (a third brother), had been an active member of the Azerbaijan Democratic Party (ADP) since 12 February 1999 and in December 2001, owing to his political activities, he was forced to leave Azerbaijan. The complainants' case is based on their brother E.N.K.'s activities. The primary political aim of ADP is to establish the democratic rule of law in Azerbaijan, and the party works actively for human rights and freedoms. E.N.K.'s role in the party included the preparation, planning and carrying out of rallies and demonstrations and he was directly associated with the ideological section of ADP's local divisions in Khatai and Nasimi districts. As an artist, he was responsible for creating slogans and posters. During demonstrations, he was responsible for handing out political material to the participants.

2.2 On 8 September 2001, E.N.K. was brutally assaulted by two policemen during a demonstration. Owing to the confusion created by the crowd, he managed to escape and was taken to hospital, where they found that he had a fracture to his left hand. The police later came to the hospital to interrogate him about ADP, and ordered him to come to the police station upon release. On 27 October 2001, as E.N.K. had not turned up at the police station, he was arrested at his home. After a body search, he was confined in a "cramped cell" for 9 to 11 hours, after which he was brutally assaulted by two policemen. He was thrown to the floor and severely beaten to the point of unconsciousness on several occasions. Twenty-four hours later, he was interrogated about his activities in ADP. Subsequently, he was released with a warning that he would be interrogated again soon. On 6 December 2001, the police came to his house with an arrest warrant and a search warrant, but E.N.K. had gone into hiding. They searched the house in which they discovered political documents and brutally "mistreated" his wife.

2.3 On 25 December 2001, E.N.K. and his wife and daughter illegally left Azerbaijan. On 2 January 2002, they arrived in Sweden and applied for asylum. While in Sweden, E.N.K. received a "verdict", sentencing him in absentia to five years' imprisonment for complicity in a coup d'état.[b] On 16 June 2004, the Migration Board rejected his request for asylum, on the basis of a report from the Swedish Embassy in Ankara, which demonstrated that the documents submitted by the complainants to support his claims were false. On 12 April 2005, the Aliens Appeal Board rejected his appeal.

2.4 From January 2002 and as a result of E.N.K.'s departure, Y.K. and E.R.K. started receiving phone calls from the police, usually late at night, requesting information on their brother's whereabouts, and receiving repeated threats that they and his families would be detained if they failed to indicate where he was. In June 2002, Y.K. was summoned by the police. Upon his appearance at the police station he was interrogated and threatened by two policemen. When he refused to provide any information on his brother, one of the policemen beat him to the point of unconsciousness. Both policemen continued beating him when he came round. He was subsequently released and told that it was "only an initial warning".

2.5 On 3 August 2002, at 2 a.m., four armed policemen called at the K.s' apartment. E.R.K. and his father were beaten and Y.K. was hit in his stomach with a baton and lost consciousness. E.R.K.'s 7-year-old son was pushed to the ground when he started to cry and his wife was locked in a room. The complainants' mother managed to escape and called for help in the street. At this point, the policemen left and the family called an ambulance and received medical assistance.

2.6 Following this incident, Y.K. and E.R.K. moved in with their aunt for three months, after which they returned to their old apartment. On 12 and 13 December 2002, they were both summoned by the police. On 13 December 2002, both brothers illegally left Azerbaijan and fled to the Islamic Republic of Iran by car. On 27 December 2002, they arrived in Sweden and applied for asylum. On 16 June 2004, the Migration Board rejected both their applications on the basis of the report from the Swedish Embassy in Ankara. Following an investigation into the political activities of the complainants' brother (E.N.K.) and the authenticity of certain documents, the report concluded that the complainants had submitted false documents and that their brother had never been politically active. On 31 January 2005 and 8 April 2005, respectively, the Aliens Appeal Board rejected Y.K.'s and E.R.K.'s appeal stating that it shared the Migration Board's views.

2.7 The complainants assert that the Swedish Embassy's report, upon which the domestic authorities refused to grant the complainants asylum, was based on anonymous sources and precludes the possibility of challenging the information it contains. The information therein comes from sources within Azerbaijan and could thus be manipulated by State authorities. The complainants conclude that the Swedish immigration authorities never assessed their cases objectively. They submit that there continues to be a consistent pattern of gross, flagrant and mass violations of human rights in Azerbaijan and provide reports to demonstrate such violations, including extrajudicial and summary executions, disappearances and torture, in particular against political and religious opponents. According to the complainants, these documents confirm that opposition leaders (from the ADP) have been detained and tortured, as the Azeri regime is said to oppress those who criticize it.

The complaint

3. According to the complainants, their deportation from Sweden to Azerbaijan would constitute a violation of article 3 of the Convention against Torture, as they risk being detained, questioned, and tortured in relation to their brother's activities and on the basis of which they were previously ill-treated themselves.[c] As the complainants are related to someone that has perpetrated serious political crimes, they claim that they will be treated accordingly, as enemies of the State.

State party's observations on the admissibility and the merits

4.1 On 16 November 2005 and 16 March 2006, the State party provided its submissions on the admissibility and the merits of both complaints. It submits that they are both inadmissible as manifestly ill-founded, and sets out the relevant provisions of the Aliens Act, pointing out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum-seekers. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new chapter 2, section 5 b, of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

4.2 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It must also be considered whether the alien committed crimes and a residence permit may be refused for security reasons. Decisions made by the Migration Board under chapter 2, section 5 b, as amended, are not subject to appeal.

4.3 The Migration Board decided on its own accord to examine whether E.R.K. qualified for a residence permit under the temporary wording of chapter 2, section 5 b, of the Aliens Act and appointed counsel to represent him before the Board. On 3 March 2006, it found that he should not be granted such a permit as the circumstances of his case could not be considered to involve an urgent humanitarian interest and he had not developed such ties to Sweden to warrant granting of a permit.

4.4 On the merits and as to the general situation of human right in Azerbaijan, the State party submits that Azerbaijan has been a party to the Convention against Torture since 1996 and has made a declaration under article 22 to deal with communications. It has also been a party to the Council of Europe (CoE) since January 2001 and is a State party to the European Convention on Human Rights. The CoE has been monitoring the human rights situation and it appears that some progress has been made. However, the State party admits that, although positive results have been achieved, Azerbaijan is still reported to be committing numerous human rights abuses, including beatings and torture of persons in custody by members of the security forces. It also submits that, while it does not wish to underestimate these concerns, they do not in themselves suffice to establish that the return of the complainants would entail a violation of article 3.

4.5 The State party explains that, following a request by the Migration Board, the Swedish Embassy in Ankara consulted legal and other expertise to obtain an opinion concerning the political activities of E.N.K. and the authenticity of the documents invoked by the complaints before the Board. When deemed necessary, checks with relevant public Azerbaijani registers were carried out, without disclosing the identity of the complainants to the Azerbaijani authorities. The documents provided by E.N.K. on which the Embassy was consulted, included a police summons, the alleged "judgement" by the Court of the Khatai district of Baku of 15 April 2003, a reference letter allegedly issued by ADP and a medical certificate. The results of the investigation have been accounted for in a report from the Embassy dated 16 February 2004. The report states that there are no indications that any criminal case or other criminal proceedings have been instituted against E.N.K. It submits that, according to these investigations, all the examined documents are false.

4.6 On the police summons, the place of residence of the concerned person is 20/40 Azadlig Ave., Baku. However, E.N.K. has never resided at that address. His place of registration is 21/25 Ganja Ave., Baku. Moreover, it refers to article 181 of the former Criminal Code of Soviet Azerbaijan. According to the new criminal code, a person who does not adhere to a police summons will be escorted to the police department by police officers from the relevant police station and would not, as indicated in the summons in question, be punished according to article 181 of the former Criminal Code. Further, this summons was issued by the police department of the Nasimi district of Baku and endorsed by a stamp with No. 66, a number which does not correspond to that police department.

4.7 As to the alleged judgement convicting E.N.K. in absentia for complicity in a coup d'état and sentencing him to five years' imprisonment, the State party submits that this document is not described as a judgement but as a warrant. The Court of the Khatai district has never instituted or held any court proceedings against E.N.K. The Judge R. Aliyev, who is alleged to have signed the warrant, is not listed among the serving judges of the Court of the Khatia, and the design and content of the warrant is not in conformity with current legal procedures. As to the reference letter, dated 21 November 2001, allegedly issued by representatives of ADP, E.N.K. is not listed among the members of the party and the letter has not been registered in the ADP office. The letter was stamped by the Nasimi branch of ADP but signed by the alleged chairman, Mr. S. Jalaloghlu. According to the State party, Mr. Guliyey, who is the Chairman, signs all official letters for that party.

4.8 As to the medical certificate invoked by E.N.K., it would appear that he did not undergo any medical treatment in the traumathology and orthopaedic hospital under the Ministry of Health on the dates mentioned in the certificate. It is signed by a Mr. Gafarov, referred to in the certificate as head of a division within the hospital, and a Mr. Salimov, referred to as a physician at the hospital. However, neither of these people was listed among the managers and physicians serving at the hospital before or after the date of issuance of the certificate. Finally, the certificate states that a political manifestation was planned on 8 September 2001 near the "28 May" underground station, but according to the report, no such manifestation took place.

4.9 The same Embassy report of 16 February 2004 highlighted the results of an investigation into documents submitted specifically with respect to Y.K.'s case. As to the police summons, the report states that there are no indications that any criminal case or other criminal proceedings have been instituted against Y.K. The documents contain formal and other errors and deviations in comparison with authentic police summons issued by the Azerbaijani police authorities. According to applicable rules and regulations, police summons have to be endorsed by a special stamp belonging to the police department of the Khatai district. Such a stamp is only used by the head of the police department who signs a document. In this case, information concerning full name, rank and position of the person who signed the document is missing. It is stated in the document that the summoned person should report to investigator Jabarov S. But no further details are provided.

4.10 The same report, of 16 February 2004, highlighted the results of an investigation into documents submitted specifically with respect to E.R.K.'s case, which included a letter stating that he would be reported to a court and a summons, both were alleged to have emanated from the police department of the Khatai district. According to the report, the letter of 13 December 2002 is not registered at the police department in the Khatai district and has an unknown reference number. It appears to be a kind of summons, but a letterhead belonging to a police agency is not used on summonses and they are not sent in envelopes. The police investigator who is alleged to have signed the letter, Mr. Jafarov, did not serve at the police department of the Khatai district in 2002. As to the alleged police summons, the report states that the rank and position of the officer who signed the document should be, but is not, indicated on the summons. According to the summons, if the complainant does not comply with it he shall be punished under article 298 of the Criminal Code. However, this article actually refers to the punishment imposed in the event that a person refuses to testify in criminal proceedings. The police investigator who is alleged to have signed the letter, Mr. Jafarov, did not serve at the police department of the Khatai district at the time the summons was issued. There is also an incorrect stamp marked on the summons.

4.11 The complainants raised objections to the findings of the Embassy report on several grounds upon which the Swedish Embassy in Ankara was requested to comment. In a further report of 16 June 2005, the Embassy explained that it normally uses external expertise and that the persons chosen are independent of the authorities and political parties in Azerbaijan. It shares the view of the Government that the identities of the persons are not disclosed to the Azerbaijani authorities or otherwise to the public to prevent them from being the subject of threats or physical abuse. The Embassy exercises great caution in selecting suitable persons to assist it, and due to security concerns and the future possibilities of obtaining expert advice in similar cases, it refrains from disclosing the identity of the sources used in this matter. As to the documents invoked, the Embassy had already conducted a thorough examination and concluded that they were false.

4.12 The Embassy's report also underlined the contradictory information concerning E.N.K.'s membership and political activities within ADP. When the Embassy conducted the initial investigation in April 2004, there were no indications that E.N.K. was a member of ADP. In February 2005, in a meeting in Baku between representatives of the Embassy and Mr. A. Shahbazov, the Secretary-General of ADP, the latter stated that E.N.K. was an ordinary member of ADP but without any specific responsibilities or tasks. He could not explain why E.N.K. had not been registered as a member in April 2004. Moreover, ADP is an officially registered and legal political organization in Azerbaijan. It is not a criminal offence to be a member of it and there is no systematic persecution of members of the political opposition in Azerbaijan. In a complementary report from the Swedish Embassy of 1 July 2005, it pointed out that it is well known that the members of ADP have been issuing false documents for which some people have been dismissed, including representatives of the Narinamov branch to which E.N.K. had belonged.

4.13 The State party also refers to a report of the Office of the United Nations High Commissioner for Refugees (UNHCR) of September 2003, in which it was stated that mere membership of an opposition political party would not suffice to substantiate a claim to refugee status. However, in certain cases, being an outspoken activist, writing critical articles in opposition newspapers, leading unauthorized demonstrations or "provocative actions" can result in a harsh response from the authorities, including arrest, detention and unfair trial.

4.14 The State party refers to contradictory information provided by all of the complainants. E.N.K. told the Migration Board, on 7 August 2003, that he had worked as a painter within ADP, producing posters and showcases, which he had distributed during the political events such as demonstrations.[d] According to the documents submitted to the Aliens Appeal Board on 19 August 2004, E.N.K. had been responsible for ideological issues within the party and had been elected secretary for the ideological departments in the Khatai and Nasimi districts. Before the Committee, however, E.N.K. claimed that he had been directly associated with the ideological section of ADP's local divisions in Khatai and Nasimi districts. Y.K. stated to the Committee that he had been summoned by the Azerbaijani police in June 2002 and that, upon reporting to them, he was physically abused. He also stated that he had received threatening phone calls daily from the police in January and February 2002. None of this information had been provided to the domestic authorities and, in the interview with the Migration Board, he stated that he had never been arrested.

4.15 The State party submits that, should the Committee consider that E.N.K. was a member of ADP, it contends that his activities and level of responsibilities within the party were not of such a magnitude that he could be considered a prominent person. His alleged activities took place mainly during 1999 and 2001, and must be viewed in light of recent presidential pardons. He has not even submitted a copy of the alleged judgement sentencing him to prison for political activities to the Committee. According to the State party, the advancement of false documents by all of the complainants calls into question their credibility. In its view, none of the complainants have substantiated their claims that there are substantial grounds for believing that they would be at personal risk of being tortured if returned to Azerbaijan.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 On 15 May 2006, the complainants responded to the State party's submission. They state that the Migration Board only had one interview with them lasting for only 1 hour and 15 minutes with respect to Y.K. and 2 hours and 30 minutes with respect to E.R.K. This is considered insufficient time to conduct a thorough and satisfactory investigation of the complainants' reasons for applying for asylum, particularly bearing in mind that the Aliens Appeal Board relies on the same information. Because these interviews were held in question and answer mode, and while recognizing that they had an opportunity to make comments upon the minutes subsequent to their interviews, the complainants claim that they were unable to give a thorough and complete description regarding the events preceding their flight from Azerbaijan.

5.2 The complainants deny the State party's claim that the Migration Board and the Aliens Appeal Board applied the same kind of test as the Committee in considering these complaints. According to the complainants, this is clear from the importance attached to the report from the Swedish Embassy in Ankara. The evidence presented by the complainants against these conclusions has not been commented upon in the State party's examination. Although both brothers rely on E.N.K.'s case to demonstrate a real and personal risk to them, their cases are not limited to the facts of his case. The fact that they were harassed, threatened, and physically abused and detained (in the case of Y.K. only) confirms that risk. The complainants note that the State party agrees that the human rights situation in Azerbaijan raises legitimate concerns.

5.3 As to the Embassy report, the complainants submit that making such inquiries of embassies often involve substantial risk to reveal the identity of the asylum applicant, thus creating a risk to him/her and their families and refers in this regard to an advisory opinion on this issue from UNHCR.[e] In the complainants' view, the State party's claim that enquiries were made without disclosing their identities or the identity of their brother E.N.K. is unreasonable. In order to obtain the acquired information a person must specify to the authorities concerned which person he wishes to have information regarding. It is also reasonable to assume that the person or persons who conduct these investigations are well known to the Azerbaijani authorities.

5.4 The complainants deny that they falsified any documents and submit that they lack the means and necessary legal expertise to make any comments upon what is asserted in the Embassy's report. However, they do submit that the objections regarding the documents are exclusively related to alleged formal errors. For example, the design of a warrant was said not to match current procedures but no details on a correct design were provided. Also, the domestic authorities chose to believe an anonymous source rather than the complainant's evidence that a demonstration had taken place on 8 September 2001. In addition, the complainants submit that they are not in a position to comment on the qualifications of those who undertook the investigation.

5.5 The complainants submit that the State party left out relevant information in its account of the Embassy report of 16 June 2005. Mr. Shahbazov, two weeks after the meeting with the migration attaché in February 2005 (see paragraph 4.12), wrote an official letter in which he stated that E.N.K. was an active member of the party and is wanted by the police department in Azerbaijan and that he risks persecution and arrest upon return. This letter was submitted to the Aliens Appeal Board. The Embassy should have considered the fact that ADP has over 40,000 members and thus it would be unreasonable to expect the party's leadership to have specific knowledge concerning individual members, even prominent members. Nor did it take into account the fact that several prominent members who were active during the same time as E.N.K. and who knew him had fled the country themselves or had been arrested and were not released until 2005.

5.6 As to the State party's claim that contradictory information was provided on E.N.K.'s political activities, the complainants provide detailed information on the efforts made by the complainants to obtain written evidence in this regard. Their efforts culminated in the receipt of a letter dated 23 March 2006, from Sardar Calaloglu, a "front figure" of ADP, and Hasret Rustamov, first deputy administrator, which asserted, inter alia, that E.N.K. had been a member since February 1999, had participated in legal and illegal manifestations, including one on 8 September 2001, and had been exposed to physical violence. According to the complainants, this information is also confirmed by a statement in a letter of 24 March 2006 from the NGO "Democracy, Human Rights and Media Monitor".

5.7 The complainants confirm the legality of ADP and question the relevance of the State party's assertion of the alleged absence of systematic persecution of members of the political opposition. They deny that they provided contradictory information, but merely added to and provided more detail at each stage in the proceedings. As to the claim that the complainants should have had a clearer picture of E.N.K.'s political activities, the complainants submit that E.N.K. did not wish to involve his relatives in such dangerous activities. As to the judgement against E.N.K., the complainants confirm the State party's information that this document was in fact a warrant for arrest rather than a judgement. They submit that due to a translation error it was incorrectly referred to as a "verdict" or judgement rather than a warrant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes the State party's confirmation in its submissions that domestic remedies have been exhausted.

6.2 The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainants to Azerbaijan would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such a determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

7.4 The complainants' claim that there is a risk that they will be tortured if returned to Azerbaijan, due to their brother's alleged previous political activities on the basis of which they claim to have been previously mistreated by the Azerbaijani authorities. The Committee notes that the complainants have failed to adduce any evidence, medical or other, that they were subjected to ill-treatment themselves in Azerbaijan. It also notes that the State party has provided extensive reasons, based on expert evidence obtained by its Embassy in Ankara, on why it questioned the authenticity of each document provided by the complainants to support their own claims and those of their brother, E.N.K.

7.5 The Committee observes that, in their comments to the State party's submission, the complainants now claim that the document which they had purported to be a judgement, sentencing the complainants' brother E.N.K. in abstensia to five years' imprisonment, is in fact a warrant for arrest (see paragraph 5.7). The complainants challenge the decision to request information of the Embassy in Ankara, which they claim risked revealing their identities to the Azerbaijani authorities. The Committee notes that the State party denies that the complainants were identified, but in any event considers the means by which the State party conducted its investigations irrelevant for the purposes of establishing whether the complainants would be subjected to torture upon return to Azerbaijan. Having presented the State party with documents which were alleged to corroborate the complainants' claims, it was up to the State party to attempt to establish the authenticity of those documents. The Committee also notes that the only other arguments made by the complainants with respect to the information in the Embassy's report, were that the discrepancies in the documents were merely "alleged formal errors" and that they lack the means and necessary legal expertise to make any further comments. The Committee considers that the complainants have failed to disprove the State party's findings in this regard, and to validate the authenticity of any of the documents in question. It recalls its jurisprudence that it is for the complainants to collect and present evidence in support of his or her account of events.[f]

8. For the above-mentioned reasons, the Committee concludes that the complainants have failed to substantiate their claim that they would face a foreseeable, real and personal risk of being subjected to torture upon their return to Azerbaijan.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainants to Azerbaijan would not constitute a breach of article 3 of the Convention.

Notes

[a] The original communication No. 270/2005 related to two complainants, Y.K. and his brother E.N.K. On 15 May 2006, in light of the fact that E.N.K. received a permanent residence permit on humanitarian grounds in Sweden on 20 December 2005, the part of the complaint relating to him was withdrawn by the complainants from communication No. 270/2005 and subsequently discontinued by the Committee against Torture during the thirty-sixth session. Thus, the only complainant remaining from communication No. 270/2005 is Y.K. However, as the complaints of the other two brothers (Y.K. and E.R.K.) depend on the facts of their brother E.N.K.'s case, the facts of E.N.K.'s case, the State party's submission and the complainants' comments relating to E.N.K.'s case are included in this decision.

[b] A copy is provided by the complainants in their comments on the State party's submission. As set out in paragraph 5.7 below, the complainants admit that there was an error in translation and that this was not a judgement/verdict but a warrant for arrest.

[c] No medical evidence has been provided to demonstrate that they were previously ill-treated.

[d] It would appear that both E.N.K. and E.R.K. are painters.

[e] UNHCR Advisory Opinion, case No. 1061/04, dated 24 September 2004.

[f] See *Mehdi Zare v. Sweden*, communication No. 256/2004, Views of 17 May 2006, para. 9.5; *M.A.K. v. Germany*, communication No. 214/2002, Views of 14 May 2004, para. 13.5; *S.L. v. Sweden*, communication No. 150/1999, Views of 11 May 2001, para. 6.4.

Communication No. 277/2005

Submitted by:	N.Z.S. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	23 August 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 22 November 2006,

Having concluded its consideration of complaint No. 277/2005, submitted to the Committee against Torture on behalf of N.Z.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is, N.Z.S., a citizen of the Islamic Republic of Iran born in 1968, currently residing in Sweden and awaiting deportation to Iran. He claims that his deportation to Iran would constitute a violation of article 3 of the Convention against Torture. The Convention entered into force for Sweden on 26 June 1987. The complainant is represented by counsel.

1.2 On 25 August 2005, the Committee transmitted the complaint to the State party in accordance with article 22, paragraph 3, of the Convention. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran pending the consideration of his case. On 6 October 2005, the State party informed the Committee that it would stay the enforcement of the decision to expel the complainant to Iran while the case is under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant, a veteran of the Iran-Iraq war, worked as a sheet-metal worker in Yazd, Iran. In the spring of 1997, he had an argument with a mullah during Friday prayers regarding a sermon condemning homosexuality. Following the argument, he was attacked and beaten by civilian policemen. The following day, he was arrested by three municipality officials who sealed his shop. He was taken to Agahi (the security police station) where he was detained for two months. During that period he was interrogated and tortured to make him confess his opposition to the regime and to extract information about the persons or organizations responsible for the murder of an imam seven years earlier.

2.2 Two months after his arrest, he was threatened with torture and ordered to sign a written confession, the content of which he was not allowed to see. After he had signed, he was told that he had confessed to having been active against the regime and sentenced to 28 months' imprisonment and hard labour. There were no court proceedings. He was then transferred to a new prison, Khourdeh Barin, in Yazd, where throughout his imprisonment he was subjected to acts of torture such as beatings and mock executions and being forced to watch other prisoners being executed. He was freed in August of 2000, after serving his sentence and being forced to sign an undertaking that he would no longer participate in activities against the regime. He was taken home.

2.3 In February 2002, the complainant took part in a demonstration during which many participants expressed dissatisfaction with the Government and which was violently dispelled by the authorities. Two or three days later he learned that all persons who had participated in the demonstration were being arrested one by one. One evening, his house was attacked but he managed to escape through the back door. He then fled to Astara, on the border with Azerbaijan, and left the country with the help of a smuggler who arranged travel documents for him via Azerbaijan and Turkey. He arrived in Sweden on 28 April 2002. He met with a contact at Stockholm airport who was to assist him with his asylum application once he had handed him his travel documents. However, the man took the documents and disappeared.

2.4 On 30 April 2002, the complainant applied for asylum to the Migration Board's Regional Office in Stockholm/Solna. A preliminary hearing was held on the same day, but no interview took place then. On 27 February 2003, a full interview was held in the presence of a State-appointed legal counsel, during which the complainant presented detailed information regarding the reasons for, and circumstances of, his escape from Iran. This interview lasted 2 hours and 20 minutes; no other interview has held at any other stage of the asylum procedure. Counsel provided the Migration Board with supplementary information, including two medical certificates which confirmed the existence injuries consistent with his claims of torture as well as his medical journal attesting that he suffered from mental illness and sleep disorder.

2.5 On 5 September 2003, the Migration Board rejected the complainant's application. The Board stated, inter alia, that it did not find his story credible because the complainant had not submitted his asylum claim immediately upon his arrival in Sweden. Furthermore, though acknowledging that certain interpretations of the Shari'a and Fatwas from religious leaders have been known to result in capital punishment, the Migration Board, referring to provisions of the Iranian constitution governing religious practices, argued that converts from Islam were tolerated as long as they observed religion in private. The Board also considered that the complainant was no longer of any interest to the Iranian authorities as he had been released from prison and did not belong to any of the categories of participants in the 2002 demonstrations in Yazd considered to be of interest by the authorities. The Migration Board concluded he had substantially exaggerated the risk of torture and inhuman treatment if deported to Iran and that, as a result, he could not be considered a refugee, while his physical condition did not warrant a residence permit on humanitarian grounds.

2.6 The complainant appealed to the Aliens Appeals Board. In his appeal, he provided an additional document, a transcript of his criminal record which stated that he had been imprisoned for 28 months; that he had been released after he had signed an undertaking not to oppose the regime; that he had participated in new actions against the Government; that he is wanted by the police and will be subjected to legal proceedings and punishment when he is found. On 17 December 2004, he requested that the Aliens Appeals Board conduct a complete torture investigation and an oral hearing; the request was denied on 23 December 2004.

On 31 March 2005, he was requested to make a statement regarding the translation of his criminal record. As he considered that the document had been translated correctly, he did not make supplementary observations. On 15 April 2005, the complainant once again requested a complete torture investigation and that the Aliens Board conduct and oral hearing; this request was denied on 26 April 2005. On 20 May, the Aliens Appeals Board rejected the complainant's application. The Board concluded that the complainant was not credible. According to the Board's translation of his criminal record, he had been imprisoned from 9 April 1988 to 11 August 1990. There was therefore an unexplained 10 years difference between the dates recorded in the document and the dates of his detention according to his statements. The Appeals Board upheld the Migration Board's findings and concluded that he had not proved that it was probable that he was either a refugee or in need of protection under the Aliens Act. With the application rejected, his expulsion order became effective and was returned to the Migration Board for enforcement.

2.7 On 31 May 2005, the complainant lodged a new application for a residence permit with the Aliens Appeals Board, arguing that all his statements had been correct and that he had had no knowledge of the inaccuracy of the criminal record before the decision of the Aliens Appeals Board. After the Aliens Appeals Board decision of 20 May 2004, the complainant's brother had contacted the Iranian authorities, who confirmed the inaccuracy and corrected the data. According to the authorities there had been a mix-up of two figures in the criminal record and the imprisonment had begun on 1376 and not on 1367. The corrected version was sent to the complainant by his brother. Counsel expressed regret at the oversight and criticized the Appeals Board for its failure to investigate the matter in a satisfactory manner, pointing out that the complainant had not been notified that it questioned the transcript. The Appeals Board rejected the application on 7 June 2005, considering there were no new facts that made it necessary to reconsider its earlier decision.

2.8 On 20 June 2005, the complainant lodged another application for a residence permit, in which he appended the original corrected document from the Iranian authorities proving that the first transcript of his criminal record had been incorrect. The Aliens Appeals Board rejected his application on 30 June 2005. The Board observed that many fake documents were in circulation and that it could attach no evidentiary value to the ones presented for the complainant. As a result, it held that there were no grounds for a reappraisal of the complainant's case.

The complaint

3.1 The complainant argues that the Swedish authorities reached their decision to reject his asylum claim based on general information without taking into account his arguments and explanations. Instead, they based their rulings concluding that he was not credible on two facts: his release from prison and a typing error in his criminal record. According to the complainant, by concluding that his release meant that he was of no interest to the Iranian authorities, the Migration Board did not take into account all the relevant information he had provided. Neither the Migration Board nor the Aliens Appeals Board ever refuted his explanation that his failure to apply for asylum immediately upon arrival was owing to his poor mental and physical condition and that he applied as soon as he was able to, i.e. two days later.

3.2 The complainant submits that the Aliens Appeals Board not only failed to notify him that it challenged his translated criminal record, but it also later refused to consider the corrected version, alleging that other fake documents were in circulation. The complainant points to the double standards employed by the Board: on the one hand. the incorrectly translated version was used as the basis of its judgment; on the other, the copy corrected by the Iranian authorities was dismissed as having no evidentiary value. The complainant notes that the Board never contacted the Swedish Embassy in Teheran to verify the document's authenticity. Finally, the complainant submits that his repeated requests for an oral proceeding before the Aliens Appeals Board were rejected even though they were mandated by law (save in cases where it was clear that such a hearing was unnecessary). The complainant maintains that, if they doubted his credibility, the Swedish authorities should have used the oral hearing to challenge the complainant's claims.

3.3 The failure of the Swedish authorities to appraise objectively, impartially, and systematically his asylum application and to review the relevant supplemental information to conclude that he was not credible lead them to gravely underestimate the risks associated with his return to Iran. Given Iran's treatment of political dissidents, deteriorating human rights situation and his own experience of imprisonment and torture at the hands of the Iranian authorities, as well as evidence that he is still wanted by the Security Police, the complainant claims that he might be declared an enemy of the State because of his activities since 1996. His forced removal to Iran would expose him anew to torture and other cruel, inhuman, and degrading treatment or punishment.

State party's observations on admissibility and merits

4.1 By submission of 9 February 2006, the State party argues that the complaint fails to rise to a basic level of substantiation and should be considered inadmissible pursuant to article 22, paragraph 2, of the Convention. The State party also initially challenged the admissibility of the complaint for non-exhaustion of domestic remedies, as it argued that under a new provision of Swedish law the Migration Board could review the complainant's case once more. However, on 29 March 2006, the State party withdrew this part of its submission after the Migration Board decided, on 3 March 2006, that the author should not be granted a residence permit.

4.2 On the merits, the State party notes the existence of numerous reports that gross violations of human rights are committed in the Islamic Republic of Iran. However, this does not suffice to establish that the complainant's forced return would violate article 3. For such a violation to occur, he must demonstrate that he faces a foreseeable, real and personal risk of being tortured, present an arguable case that goes beyond mere theory and suspicion, and it rests primarily with the complainant to collect and present evidence in support of his/her account. The State party sets out the relevant provisions of the Aliens Act and points out that several of its provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The State party notes that, according to the Government's Bill 1996/97, an applicant's story must be accepted if it appears to be credible, since it is seldom possible for the applicant to provide evidence clearly showing that he risks persecution. Both the Migration Board and the Aliens Appeals Board concluded that the complainant was not credible. It also submits that the national authority conducting the asylum interview is naturally in a good position to assess the credibility of any asylum-seeker's claims. The State party refers to UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status and submits that it is for the complainant to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence.

4.3 The State party observes that, throughout the procedure, the complainant made a number of inconsistent statements regarding matters of vital importance to the assessment of his claim. The following inconsistencies were highlighted: firstly, the reasons the complainant gave for his arrest and the moment of his detention varied considerably in the statements made to the Migration Board, the Aliens Appeals Board, and the complaint submitted to the Committee. To the Migration Board he stated that he had argued with an imam because his sermon only dealt with historical issues and that a week later he was arrested; to the Aliens Appeals Board he asserted that he had declared to the imam that he thought it would be better to convert to another religion and that he was arrested on the following day; to the Committee, he claimed that he had shouted at the mullah during a sermon on homosexuality. There are also a number of inconsistencies in the complainant's account of when and for how long he was imprisoned and whether he had been sentenced or not. The State party notes that during his interview with domestic authorities, the complainant stated that he had never been sentenced and that he had been imprisoned for 28 months. It also notes that in his appeal to the Aliens Appeals Board he claimed that he had been sentenced to 26 months imprisonment after 2 months in detention and finally to the Committee that he had been forced to sign a confession and convicted to 28 months imprisonment after being detained for 2 months. According to the State party, the complainant elaborated on his claim in successive stages, which gives reason to seriously question its reliability. Additionally, it is noted that there are contradictions in the complainant's statements regarding the date of his arrival in Sweden. In his asylum application he stated that he arrived on 23 April 2002 whereas in his appeal to the Aliens Appeals Board he claimed to have arrived on 28 April.

4.4 The State party submits further that the Swedish Embassy in Teheran was requested to provide information regarding the Iranian certificates submitted by the complainant regarding his detention. The Embassy consulted a legal expert who concluded that the certificates are almost certainly false. The first certificate, an abstract from a criminal record, contains information that could not appear in a criminal record, such as the fact that the complainant was released on bail, and had resumed political activities and was wanted by the police. The criminal record only contains information about crimes and convictions. Moreover, a person serving a prison sentence cannot be released on bail. The second certificate which purports to be a correction of the first one contains information that the person in question was called up for military service during the alleged term of imprisonment. The Embassy notes that none of the certificates specified for which crimes he was convicted. The State party highlights that, although the first certificate was dated July 2002, it was not submitted until September 2004 and that its existence was not even mentioned by the complainant during his interview with the Migration Board in 2003. Finally, the State party notes that neither the complainant nor his counsel noticed the misdating in the first certificate, concluding that the complainant has provided false information and documentation.

4.5 The State party concludes that even if it is considered established that the complainant was subjected to torture in the past this does not substantiate his claim that in the present he risks torture if returned to Iran.

Complainant's comments on the State party's observations on the admissibility and the merits

5.2 By submission of 20 June 2006, the complainant reaffirms that all domestic remedies have been exhausted and submits that though a new Aliens Act had come into force, in the circumstances of his case, he could not appeal under the new provisions. The complainant notes that the Migration Board only held one interview with him lasting 2 hours and 20 minutes which took place almost a year after he arrived in Sweden. The minutes of the interview do not constitute an exact description of what was said. The complainant notes that the decisions of both the Migration Board and the Aliens Appeals Board rely on information obtained during the above-mentioned interview. He notes that he had requested new oral proceedings at the Aliens Board on two separate occasions as the Migration Board had misjudged his credibility and his statements regarding the torture he had been subjected to. He adds that none of the so-called inconsistencies were dealt with by the Migration Board or the Aliens Appeals Board. Regarding the alleged inconsistencies on the reasons for his arrest, he notes first that, in his disagreement with the imam, he had addressed a number of different issues. He submits that it is normal that at each stage of the procedure he provided additional and more detailed information, sometimes in response to new questions that were put to him. As for the timing of his arrest, he submits that consideration must be taken of the fact that persons having experienced different kinds of traumas may have memory loss regarding their trauma. He notes moreover, that the interview took place more than five years after the event. As for the supposed inconsistencies in the complainant's account of when and for how long he was imprisoned and whether he had been sentenced or not, it is submitted that he had actually stated that he had never been convicted by a *court* and that the difference in the number of months spent in detention (26 or 28) were a matter of whether the two months in detention prior to his signing the confession are included in the calculation.

5.3 The complainant notes that during the procedure before the Committee he had requested several extensions of the delays to present information. This was because he intended to procure evidence of his imprisonment and the fact that he was still wanted by the authorities. Unfortunately, he was unable to do so without taking action that he believed would put his relatives at risk. Nevertheless, he submits that he has fulfilled his obligation to collect and present evidence in support of his claims.

5.4 Regarding the information on his arrival in Sweden, the complainant submits that he had had to flee Iran with the assistance of a smuggler, who provided him with false documentation because it was not possible for him to obtain a passport in Iran. The complainant notes that the interest in verifying his itinerary emanates from a need to establish which country should be responsible for his application of asylum. He argues that an asylum-seeker's need of protection cannot be dependent on whether he or she has given a correct statement regarding his/her itinerary. Once the complainant realized that the Swedish authorities attached great importance to his itinerary he submitted his luggage claim to support his statement. He notes that the Aliens Appeals Board did not attach any importance to this inconsistency.

5.5 The complainant submits that although the State party's account of the Migration Board's decision is essentially correct, that one of the main reasons given for the rejection of his application was that he had been released, thereby showing that the authorities had no further interest in him. The complainant submits that the State party's assertion that during his interview he had been arrested "one week" after the Friday sermon is not in the minutes of the interview. What he did assert in his interview was that his store was closed down a week after he argued with the imam/mullah.

5.6 The complainant confirms the description of the appeal to the Aliens Appeals Board as essentially correct. Nevertheless, the translation made of the criminal record submitted by the complainant regarding his detention, states that he was released on bail, which is incorrect. Throughout the asylum process the complainant stated that he had been released after being obliged to sign a document in which he undertook, inter alia, not to participate in any activity against the Iranian regime.

5.7 The complainant submits that it is impossible for him to comment on whether the person or persons consulted by the Embassy in Teheran were qualified experts. The conclusion that the document is false is based on information given by anonymous expert or experts in a questionable Embassy report. As for the certificates themselves, the complainant highlights that the Aliens Appeals Board, which has extensive experience in reviewing such documents, never raised the objections now advanced by the State party. Though the Board found inconsistencies between some of the facts submitted in the certificate and the statements made, it at no time questioned whether a criminal record can or not contain certain types of information. As for the second certificate, the Embassy doesn't even claim that this document is false, only concluding that, as the first one is false the second one must be too. The complainant concludes that the State party has failed to substantiate its allegations that the documents were false.

5.8 Regarding the fact that the certificate was only presented in 2004 to the Appeals Board though it is dated 2002, the complainant explains that after the Migration Board rejected his application he was instructed by legal counsel to try to obtain additional documentation. He then contacted his family in Iran and was informed by his brother that he was in possession of an extract of his criminal record. The complainant was unaware of the existence of this document before then and does not know why his brother had requested the document from the authorities.

5.9 The complainant notes that the State party at no point contested that he was detained and tortured. He maintains that the information provided by him regarding the measures adopted against him by the authorities clearly demonstrate that they are still looking for him.

Additional comments by the State party

6.1 On 5 September 2006, the State party submitted the following complementary comments. It replies to the complainant's assertion that the minutes of the interview contain no reference as to whether he was arrested one week after his discussion with the imam and refers to the minutes where it is in effect stated that he was arrested following the closure of his shop, which took place one week after the Friday sermon.

6.2 Regarding the translation of the word *tahood* as bail, the legal expert consulted the original documents and had no idea of how the terms had been translated. According to the expert, a criminal record contains only information about crimes and convictions and it was because the document contained additional information that it was considered questionable.

6.3 Finally, in response to the complainant's assertion that it had not been contested that he had been detained, physically abused and tortured; was not in a position to either confirm or contest this point. It highlights, however, that the medical certificates provided by the complainant supports the existence of old scars but do not per se prove when or how these scars were caused. Moreover, the certificate confirms that the injuries correspond with his description of their origin was not issued by an expert on torture.

Issues and proceedings before the Committee

Consideration of admissibility

7. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. Following information received from the State party on 29 March 2006 that the Migration Board had decided, on 3 March 2006, not to grant a residence permit to the complainant, the Committee considers that available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to its consideration of the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but it must be personal and present.

8.4 In assessing the risk of torture in the present case, the Committee has noted the complainant's contention that there is a foreseeable risk that he would be tortured if returned to Iran, on the basis of his alleged previous incarceration and torture and the fact that by participating in a demonstration against the Government he did not comply with the condition for his release. The Committee notes the complainant's allegation that the asylum procedure in Sweden was defective, among others things, as his requests for oral proceedings before the Aliens Appeals Board were rejected even though the law specifies that the Appeals Board should grant such proceedings if this can be presumed to benefit the investigation. The Committee also notes that the complainant has provided medical certificates that support his contention that he was tortured and that the domestic instances did not question that the complainant had been detained, physically abused and tortured, though the State party notes that it is not in a position to either confirm or deny this allegation.

8.5 However, the Committee also notes that while it is probable that the author was subjected to torture, the question is whether he currently runs a risk of torture if returned to Iran. It considers that, even if it were assumed that the complainant was detained and tortured in Iran in the past, it does not automatically follow that, six years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Iran in the near future.[a]

8.6 The Committee notes that the State party has provided extensive reasons, based on expert evidence obtained by its Embassy in Tehran, why it questions the authenticity of the documents presented by the complainant to attest his detention in Iran. It also notes that the complainant's arguments, and the evidence to support them, have been presented to the State party's asylum determination bodies. It recalls its jurisprudence to the effect that it is for the complainant to collect and present evidence in support of his or her account of events,[b] and reiterates that it is not an appellate, quasi-judicial or administrative body. In the present case, the Committee concludes that the State party's review of the complainant's case was not deficient in this respect.

8.7 In the Committee's view, the complainant has failed to adduce evidence about the conduct of any political activity of such significance as would still attract the interest of the Iranian authorities. Nor has he submitted other tangible evidence to demonstrate that he continues to be at a personal risk of torture if returned to Iran. For these reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Iran would not constitute a breach of article 3 of the Convention.

Notes

[a] See *S.S.S. v. Canada*, communication No. 245/2004, Views of 16 November 2005, para. 8.4; *Haad v. Switzerland*, communication No. 126/1999, Views of 10 May 2000, para. 8.6.

[b] See *Mehdi Zare v. Sweden*, communication No. 256/2004, Views of 17 May 2006, para. 9.5; *M.A.K. v. Germany*, communication No. 214/2002, Views of 14 May 2004, para. 13.5; *S.L. v. Sweden*, communication No. 150/1999, Views of 11 May 2001, para. 6.4.

Communication No. 279/2005

Submitted by: C.T. and K.M. (represented by counsel)

Alleged victim: The complainants

State party: Sweden

Date of the complaint: 7 September 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2006,

Having concluded its consideration of complaint No. 279/2005, submitted to the Committee against Torture by C.T. and K.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1. The complainants are C.T., a citizen of Rwanda, of Hutu ethnicity, and her son, K.M., born in Sweden in 2003, both awaiting deportation from Sweden to Rwanda. Although the complainants do not invoke specific articles of the Convention, their claims appear to raise issues under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are represented by counsel.[a]

1.2 On 9 September 2005, the Committee requested the State party not to deport the complainants to Rwanda while their case is pending before the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 7 November 2005, the State party acceded to the Committee's request.

Factual background[b]

2.1 Before the first named complainant's arrival in Sweden on 17 October 2002, she lived in Kigali. She and her brother had become members of the PDR-Ubuyanja party sometime between February and May 2002. In April 2002, they attended a meeting of the party. Following this meeting, the leaders of this party, Mr. Bizimungu and Mr. Ntakirutinka, were arrested. In May 2002, the first named complainant and her brother were arrested and she was imprisoned in a container in Remera in Kigali, with six other women. She has not seen her brother since. She was interrogated about her own involvement and that of her brother in the PDR-Ubuyanja party. She was repeatedly raped, under the threat of execution, and became pregnant with her son K.M., the second named complainant, who was born in Sweden.

2.2 In October 2002, a soldier helped her escape and took her to a religious order, which helped her organize her flight to Sweden. On 17 October 2002, she arrived in Sweden and requested asylum. On 23 March 2004, her request was denied by the Migration Board on grounds of lack of credibility and developments in Rwanda following the elections of 2003. In 2003, her son was born. On 29 June 2005, the Migration Board's decision was confirmed on appeal to the Aliens Appeals Board. On 7 September 2005, the Aliens Appeals Board denied a new application.

The complaint

3.1 The first named complainant claims that, if returned to Rwanda, she will be immediately detained and tortured by the Rwandan Directory of Military Intelligence (DMI), on account of her membership of the PDR-Ubuyanja party. She would be raped again and interrogated in order to make her reveal how she escaped. She fears that she and her son could even be killed.

3.2 She further claims that she will be tried by the Gacaca courts, which were set up by the Government to avenge the genocide of 1994. She claims to be one of the 760,000 Hutus who are due to be tried by these courts, in particular for her alleged involvement in a massacre at Kigali Hospital.

State party's observations on admissibility and the merits

4.6 On 19 June 2006, the State party provided its submission on the admissibility and the merits. It submits that the complaint is inadmissible as manifestly ill-founded, and sets out the relevant provisions of the Aliens Act, pointing out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum-seekers. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new chapter 2, section 5 b, of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

4.7 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It must also be considered whether the alien committed crimes and a residence permit may be refused for security reasons. Decisions made by the Migration Board under chapter 2, section 5 b, as amended, are not subject to appeal.

4.8 On the facts, the State party provides the reasoning behind the Migration Board's decision to reject the application for refugee status under chapter 3, section 2, of the Aliens Act, for residence permits as aliens otherwise in need of protection under chapter 3, section 3, and for residence permits on humanitarian grounds under chapter 2, section 4, paragraph 1, subparagraph 5. It considered that: the general political situation in Rwanda did not per se constitute a ground to grant the complainants asylum; according to the European Union special representative in the region, there had been positive developments in Rwanda following the general elections in 2003; the PDR-Ubuyanja party was banned before the elections in 2003 and unknown persons previously suspected of involvement in the party or persons who have been active in the party at a low level cannot be considered to run any risk of persecution or harassment; and the credibility of certain of the first-named complainant's statements was doubtful. The State party submits that, while both the Migration Board and Aliens Appeals Board found reason to question the credibility of certain statements made by the first named complainant, this was not the decisive factor for their decisions. Indeed, the Migration Board found that, irrespective of the factors which detracted from the complainant's credibility, the developments in Rwanda after the 2003 elections had been such as to render it unlikely that she would be at risk of persecution due to her membership of the PDR-Ubuyanja party.

4.9 Since the new application to the Aliens Appeals Board was [illegible] September 2005 [illegible] new application was lodged on 27 September 2005. On 22 November 2005, it was transferred from the Aliens Appeals Board to the Migration Board for determination in accordance with the temporary legislation contained in chapter 2, section 5 b of the 1989 Aliens Act. On 9 March 2006, the Migration Board rejected the application, as the medical certificates furnished by the complainants (including a psychologist's certificate of 11 July 2005) did not show that the first named complainant suffered from such a serious mental illness or comparable condition that she could be granted a residence permit on medical grounds. As regards the second named complainant, who was then nearly three years, the Board was of the view that he had not developed such close ties with Sweden that he could be granted a residence permit on that ground. On 16 March 2006, the complainants lodged an additional application with the Migration Board for a residence permit under the temporary legislation contained in chapter 2, section 5 b of the 1989 Aliens Act. On 15 August 2006, the State party subsequently informed the Committee that by a decision of 5 July 2006, the Board found that the complainants were not entitled to residence permits. While it considered medical and psychological opinions not previously presented to the Swedish authorities, it found that no new circumstances had emerged and that there was no medical obstacle to enforcing the expulsion order. In addition, concerning the second named complainant, it found that he had not developed such ties to Sweden that he should be granted a residence permit.

4.10 On the merits, the State party endorses the finding of both the Migration Board and the Aliens Appeals Board that the first named complainant was vague in her statement regarding her involvement in the PDR-Ubuyanja party. She did not provide details about the party, with the exception of the name of the party leader, former President Pasteur Bizimungu, and that of the secretary-general, former Minister Charles Ntakirutina. She did not give a detailed account of the activities and programme of the party but merely stated that the party wished to "rebuild the country and give everyone their rights". In addition, she amended the information she gave with respect to when she became a member of the party during the proceedings. Initially, she claimed to have become a member in May 2002, after attending a meeting. However, after her first application was turned down by the Migration Board, she amended this statement and claimed to have become a member at an earlier stage, in February or March 2002. The State party notes would like to point to the fact that the amended statement is inconsistent with the statement before the Migration Board that she attended a party meeting in April 2002 to become a member.

4.11 The State party highlights the fact that, although there are several international reports regarding the arrest of PDR-Ubuyanja members, there are no such reports to support the claim that the first named complainant and her brother were arrested and detained. The State party also notes that, according to international reports, many of the individuals who were arrested due to their alleged involvement in the party have been released. Only a small number of people have been sentenced to imprisonment by criminal courts because of their involvement in the party.

4.12 As to the document invoked as evidence by the complainant drawn up by Felicien Dufitumukiza, a former representative of human rights group LIPRODHOR, the State party notes that there is a factual inconsistency in this document if compared to what the complainants have stated both in the national proceedings and before the Committee. Mr. Dufitumukiza refers to a LIPRODHOR journal from July 2001, according to which from that day there is no member of the C.T. family still alive. However, the complainants claim that the first named complainant and her brother were arrested in the spring of 2002, i.e. almost a year after the date of the journal in which LIPRODHOR claims to have [illegible] information regarding her case. It is not clear from the document who informed LIPRODHOR about the detention of the first complainant and her brother.

4.13 As to the claim relating to the Gacaca tribunals, the State party submits that, while the system has been the subject of criticism from a human rights perspective, the international community at large, including the European Union, has given it its support. Regarding the allegation that the first named complainant lives in fear of facing trial before the Gacaca tribunals for participation in the genocide in 1994, the State party draws the Committee's attention to the fact that this allegation was made for the first time in the so-called new application filed before the Aliens Appeals Board on 23 September 2005, and then only by reference to an attached letter from M.U. to the first complainant. The complainants have not provided any details regarding this allegation either before the national authorities or before the Committee, and there is no conclusive evidence, substantiating the alleged fear. The submitted documents drawn up by Mr. Joseph Matata, a representative of Centre du lutte contre "impunité et l'injustice au Rwanda", only refer to the Gacaca tribunals in general and do not support the allegation that the first complainant personally would be at risk. The only evidence in support of this claim is the letter from M.U., referred to above. The letter, which is undated and unsigned, does not give any specific details of the alleged criminal investigation or of any pending criminal charges in Rwanda that concern the first named complainant. In addition, it does not appear from the letter who the author is or how he or she received the information. In the State party's view, the letter cannot therefore be regarded as reliable evidence that, in case of expulsion, the first named complainant would risk indictment for genocidal acts before the Gacaca tribunals, let alone that she would be at risk of torture.

4.14 The State party recalls the Committee's jurisprudence that while past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention, the aim of the examination is to determine whether the complainants would risk being subjected to torture if returned to their country at the present time. Thus, even if it were to be established that the first named complainant had been subjected to ill-treatment in 2002, it does not prove her claim that her return to Rwanda would expose her to a foreseeable, real and personal risk of being tortured, thereby constituting a violation of article 3. The State party acknowledges that reports had been made that military troops, until their withdrawal in October 2002, abducted women and children from villages they raided to perform labour, military services and sexual services.

4.15 The State party submits that, even if the first named complainant had proved that she was a member of the PDR-Ubuyanja party, and that she was arrested and detained and managed to escape, the political situation in Rwanda has undergone significant changes since the complainants' arrival in Sweden, especially since the 2003 elections. The party is a proscribed political party and its activities are subject to monitoring by the authorities. However, there is no objective evidence to show that ordinary members or relatives of members of the party are at risk from the authorities. According to her own statement, she only attended one party meeting. If the first named complainant had became a member of the party, it must have been at a very low level and thus she would not be at risk from the authorities. For these reasons, the State party concludes that the complainants have not shown that there is a foreseeable real and personal risk of torture if returned to Rwanda.

Complainants' comments on the State party's observations on the admissibility and the merits

5.1 On [illegible] 2006, the complainants [illegible] the Migration Board [illegible] of 5 July 2006, [illegible] that there were no medical obstacles to returning the complainants to Rwanda. However, it did not consider what the effects of being returned would have on their health in Rwanda. The Board made this decision despite a medical report of 2 June 2006, which confirmed the first complainant's claims of rape and diagnosed her as suffering from PTSD.

5.2 As to the State party's claim that the first named complainant's lack of detail regarding the PDR-Ubuyanja party demonstrates her lack of credibility, the complainants argue that a document in Danish entitled "PDK … Parti Democratique pour le Renouveau-Ubuyanja (PDR-Ubuyanja) Udlaendingestyrelsen", dated 19 June 2003, which provided background information on this party, was available to the Migration Board. According to this document, the PDR-Ubuyanja party never developed into a fully fledged party: no party programme was ever published, no membership cards issued and no formal membership list established. Interest in supporting the party was shown by attending the few private meetings that were organized. In April 2002, the first named complainant attended a meeting in Kigali with her brother, where they met and were recruited by Mr. Ntakirutinka. The DMI would have known that the first named complainant's brother was Mr. Ntakirutinka's employee, and would, on that basis alone, have singled out both brother and sister for arrest. The same document also stated that persons who were related to members or were suspected to be members themselves would have difficulties in Rwanda, as they might be aware of PDR-Ubuyanja documents of interest to the authorities.

5.3 According to the complainants, the Swedish authorities paid little attention to the position of UNHCR outlined in its paper of January 2004, published after the elections of 2003. It stated that early in 2004, almost two years after the arrest of Pasteur Bizimungu and Mr. Ntakirutinka, those associated with the PDR-Ubuyanja party were at greatest risk inside the country. On the issue of victims of rape, the complainants [illegible] "The crime of rape itself and the manner in which it was committed qualify as a serious form of torture and may warrant continued international protection ... The victims should favourably be considered for the granting of refugee status on the ground that their refusal to return to Rwanda is due to compelling reasons arising from previous persecution."

5.4 The first named complainant provides an account of what happened to her while in detention and a letter from a woman, who allegedly was detained at the same time, and corroborates her claim that she was tortured during her detention. Since then, this woman has received refugee status in France. According to the complainants, this evidence was not presented during the domestic proceedings, as upon receipt the first named complainant's "case had been finally rejected and there was talk of an amnesty for families with children so she set her hopes on that".

5.5 As to the State party's argument that the statement from M.U. was undated and unsigned, the complainants explain that only the English translation was handed in to the Swedish authorities and attach for the Committee's attention the original handwritten letter signed by M.U. and M.U. was the first named complainant's neighbour in Kigali. When the complainant [illegible] back to Rwanda she contacted M.U. who expressed concern about [illegible] Rwanda. This was because M.U. had heard that her name [illegible] as one of the suspects involved in the massacre of [illegible] 1994. Afterwards, M.U. wrote his letter, which is [illegible] C.T. telephoned M.U., as a result of which M.U. sent an e-mail to explain why it was not possible to obtain a document with the first named complainant's name on it as one of the suspects. M.U. wrote that the list is confidential and has not been published for fear that suspects will abscond. M.U. has not responded to a further request for information, to provide the name of the person that heard that the complainant was a suspect, the date this occurred etc.

5.6 As to the State party's argument that the first named complainant only raised the fact that she was accused before the Gacaca court at a late stage, the complainants argue that this can be explained by the fact that the Gacaca process has been going through various developments and that in 2005, more extensive witness material was gathered. It was only upon contact with M.U. that she was informed of this information. Regarding the procedure before the Gacaca courts, the complainants refer to a report by Penal Reform International of June 2006, which states inter alia that the Gacaca "raises serious misgivings regarding the situation of accused persons".

5.7 As to the argument that no evidence exists that PDR-Ubuyanja party members were arrested or detained since 2003, counsel states that he represented a Rwandan asylum-seeker before the Swedish authorities who had been subjected to torture while being interrogated on his involvement in the PDR-Ubuyanja party in 2004. This individual was considered credible and was granted refugee status by the Swedish authorities in 2005. As to the fact that neither the first named complainant nor her brother were listed as detainees on any of the Amnesty lists, the complainants submit that these lists were incomplete and that, according to the Danish document referred to, "some of the detainees on the Amnesty list had in reality no connection with PDR-Ubuyanja".

5.8 According to the complainants, the discrepancy in the dates in the letter from the representative of the LIPRODHOR was a typographical error and a new certificate is submitted to the Committee with the correct date. Finally, the complainants submit that a return to Rwanda in light of the heinous circumstances of the first complainant's pregnancy, where they have no immediate family, may have serious consequences for C.T.'s son as his mother may not be able to give him the help and support that he needs. He is currently attending a preschool and is being investigated to ascertain whether he suffers from a form of autism.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes the State party's confirmation, in the submission of 15 August 2006, that domestic remedies have been exhausted.

6.2 The Committee finds that no further obstacles to the admissibility of the complaint exist, declares it admissible and thus proceeds to its consideration on the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainants to Rwanda would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individuals concerned would be personally at risk in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in its jurisprudence the Committee has determined that the risk of torture must be foreseeable, real and personal.

7.4 The Committee notes the claim that if the complainants are returned to Rwanda they will be detained and tortured, on the basis of the first named complainant's involvement in the PDR-Ubuyanja party, for which reason she was detained and subjected to torture. She also fears that she may be tried before the Gacaca courts. On this latter issue, without wishing to consider whether the Gacaca courts meet international standards of due process, the Committee considers that fear of a future trial before them is in itself insufficient to amount to a reasonable fear of torture.

7.5 As to the first named complainant's claim of past torture due to her political activism, the Committee notes that the State party questions her credibility due to her vagueness, inconsistency and lack of evidence in her account of and involvement in the PDR-Ubuyanja party and the argument that she would not suffer torture given the developments after the elections in 2003. The Committee notes that the State party did not contest, during the domestic proceedings, nor in its submission to the Committee, the first named complainant's claim (supported by two medical reports) that she was repeatedly raped in detention, as a result of which she became pregnant, and gave birth to her son in Sweden. In fact, on a review of the decisions of the domestic authorities, it would appear that these medical reports were not taken into account at all and that the issue of whether or not the complainant had been raped and the consequences thereof for her and her son were not considered. Thus, on the basis of the medical evidence provided, and the State party's failure to dispute the claim, the Committee considers that the first named complainant was repeatedly raped in detention and as such was subjected to torture in the past. On examining the dates of her detention and the date of birth of her son, the Committee considers it without doubt that he was the product of rape by public officials, and is thus a constant reminder to the first named complainant of her rape.

7.6 On the State party's general argument that the first named complainant is not credible, the Committee recalls its jurisprudence that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the complainant's presentation of the facts are not material and do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she was repeatedly subjected to rape in detention.[e] The Committee also takes into account the revised letter from LIPRODHOR (para. 5.8), the authenticity of which has not been contested by the State party, which attests to the first named complainant's arrest along with her brother by the Directory of Military Intelligence.

7.7 As to the general situation in Rwanda, the Committee considers that information provided by the complainants demonstrates that ethnic tensions continue to exist, thus increasing the likelihood that the first named complainant may be subjected to torture on return to Rwanda. For the above reasons, the Committee considers that substantial grounds exist for believing that the complainants would be in danger of being subjected to torture if returned to Rwanda.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention.

9. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Notes

[a] The complainants have been represented by counsel since 22 March 2006, after the initial submission.

[b] The complainants do not describe the facts in detail themselves: the following account is a summary of the facts as described by the first named complainant to the Swedish immigration authorities and set out in the immigration authorities' decisions.

[c] The State party acknowledges that this is Rwanda's largest human rights organization.

[d] *X, Y and Z v. Sweden*, complaint No. 61/1996, Views adopted on 6 May 1998, para. 11.2.

[e] *Alan v. Switzerland*, case No. 21/1995, decision adopted on 8 May 1996, *Tala v. Sweden*, case No. 43/1996, decision adopted on 15 November 1996, *Kisoki v. Sweden*, case No. 41/1996, decision adopted on 8 May 1996.

Communication No. 280/2005

Submitted by: Gamal El Rgeig (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 15 September 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 2006,

Having concluded its consideration of communication No. 280/2005, submitted by Gamal El Rgeig under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is Gamal El Rgeig, a Libyan national born in 1969, currently residing in Switzerland where he submitted an application for asylum on 10 June 2003; the application was rejected on 5 March 2004. He claims that his deportation to the Libyan Arab Jamahiriya would constitute a violation by Switzerland of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 16 September 2005, in accordance with rule 108, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur for new complaints and interim measures, requested the State party to suspend the expulsion of the complainant while his complaint was being considered. In a note verbale dated 27 October 2005, the State party informed the Committee that it acceded to this request.

The facts as submitted by the complainant

2.1 In February 1989, the complainant was arrested for his "political activities" and was held at the Abu Salim prison for six years, without ever having been accused or tried. He claims that, during his detention, he was repeatedly subjected to ill-treatment and acts of torture.

2.2 The complainant was released in 1995 and allegedly continued to be harassed by the security forces. He claims to have been summoned regularly to the security office where he was threatened and tortured and, in 2000, State agents allegedly burst into his home to confiscate his computer. He alleges that, following that incident, he was arrested and tortured on several occasions. The last arrest took place in 2002, and on that occasion the acts of torture were more severe.

2.3 In March 2003, he learned that one of his friends, who had been imprisoned at the same time as the complainant and for the same reasons, had been sent to prison again because his name appeared on a list. The complainant concluded that his name also appeared on that list. Following these events, the complainant left the Libyan Arab Jamahiriya for Egypt, where he claims to have obtained an Italian visa through "an acquaintance" at the Italian Embassy. He arrived in Italy, and from there proceeded to Switzerland. On 10 June 2003, upon his arrival in Switzerland, he filed an application for asylum and produced official documents indicating that he had been imprisoned for six years, as well as one of the summonses, dated December 1997, that he had received after his release.

2.4 The complainant states that he continued his political activities in Switzerland, where he maintained contact with various organizations and associations campaigning for human rights in the Libyan Arab Jamahiriya. He claims that he received two letters from his family informing him that the security forces had come looking for him on several occasions and that they had threatened members of his family. Following those events, his family was forced to move.

2.5 On 5 March 2004, the complainant's application for asylum was rejected by the Federal Office for Refugees, now the Federal Office for Migration, which ordered his expulsion from Swiss territory by 30 April 2004. The complainant notes that the Federal Office for Refugees acknowledged that he had been imprisoned without trial, but concluded that it had not been established that he had been tortured and persecuted after his release in 1995. On 5 April 2004, the complainant lodged an appeal against this decision and, on 7 July 2004, the Swiss Asylum Review Board rejected the appeal, considering that there were many factual inconsistencies in the complainant's allegations and that his presentation of the facts was not believable. The Commission therefore upheld the decision of the Federal Office for Refugees, ordering the complainant's return under threat of expulsion.

2.6 On 8 September 2005, the Geneva Police Commissioner issued an order for the administrative detention of the complainant. On 9 September 2005, the Cantonal Aliens Appeal Board (*Commission cantonale de recours en matière de police des étrangers*) upheld the order for the complainant's detention for a period of one month, that is, until 8 October 2005. On 19 September 2005, the complainant appealed to the Geneva Administrative Tribunal against the decision of the Geneva Cantonal Aliens Appeal Board of 9 September 2005, which upheld the order for his administrative detention. Attached to his appeal to the Administrative Tribunal were letters in support of his application for asylum from non-governmental organizations that deal with the Libyan Arab Jamahiriya and political refugees in Switzerland. The complainant was released on an unspecified date, and on 27 September 2006, the Administrative Tribunal decided to strike his appeal from the list of cases, since it was no longer necessary.[a]

The complaint

3. According to the complainant, the Federal Office for Refugees acknowledged that he had been imprisoned for six years without trial but considered that he had not succeeded in proving that he had been persecuted between 1995 and 2003, whereas it had been impossible to adduce the evidence to that effect. The Swiss authorities had apparently not examined the recent reports published by various international observers concerning cases of detention and torture in the Libyan Arab Jamahiriya. The complainant maintains that there are substantial grounds for

believing that he would be subjected to torture if he were returned to the Libyan Arab Jamahiriya and that, consequently, his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

State party's observations on the merits

4.1 In a note verbale dated 27 October 2005, the State party declared that it did not contest the admissibility of the complaint, and on 16 March 2006, it submitted its observations on the merits. With regard to the effectiveness of the appeal to the Administrative Tribunal of Geneva Canton, the State party observes that the sole subject of that procedure was the lawfulness of the administrative detention, and that it did not affect the binding nature of the decision of the Federal Office for Migration ordering the complainant's expulsion. The State party concludes that the appeal to the Administrative Tribunal can therefore not be deemed effective, and recalls that it has not contested the admissibility of the complaint.

4.2 The State party emphasizes that the complainant does not adduce any relevant new evidence that would enable him to challenge the decision of the Asylum Review Board. It notes that, following a thorough examination of the complainant's allegations, the Board, like the Federal Office for Migration, was not convinced that the complainant ran a serious risk of being persecuted if he was returned to the Libyan Arab Jamahiriya.

4.3 Having recalled the Committee's jurisprudence and its general comment No. 1 on the implementation of article 3, the State party endorses the grounds cited by the Asylum Review Board substantiating its decisions to reject the complainant's application for asylum and to uphold his expulsion. It recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".

4.4 The State party maintains that, since the complainant was released on 2 March 1995, there is no temporal link between the complainant's detention and his flight in 2003; this was allegedly confirmed by the complainant during his registration hearing on 13 June 2003. At the hearing, the complainant confirmed that he had not had any problem with the authorities after his release and had left the Libyan Arab Jamahiriya because he had been unable to find work there. He added that he was "afraid of going back to prison". These assertions apparently contradict the statements made by the complainant during his cantonal hearing, where he claimed that he had been continually persecuted after his release in 1995 owing to his dissemination of ideas relating to freedom of expression and a multiparty system. Even if the complainant later changed the reasons for his flight by referring to persistent harassment and ill-treatment because of his political convictions, the situation of dissidents in the Libyan Arab Jamahiriya does not in itself make it possible to conclude that he is likely to be subjected to torture on return to his country. The State party adds that the complainant has not provided the least shred of evidence that would make it possible to conclude that the security forces had continued to harass or mistreat him after his release. The 1997 summons instructing the complainant to report to the El Barak security office cannot alter this conclusion.

4.5 The State party recalls that the complainant not only remained in the Libyan Arab Jamahiriya for eight years after his release but also that he returned after a trip to Egypt in 2001. On that occasion, in spite of the fact that the complainant, according to his own allegations, had been forbidden to travel by the authorities, no proceedings were instituted against him, although the authorities had stamped his passport on his departure and return to the country. The State party also finds it surprising that the complainant had been able to obtain a passport without any difficulty in August 1998.

4.6 The State party notes that there were a number of inconsistencies in the supporting documents from non-governmental organizations attached to the complainant's appeal to the Asylum Review Board and that, in particular, contrary to the statements made by the complainant during the cantonal hearing to the effect that he had always worked alone, some of these documents maintain that he had been active in political groups. For the most part, these documents mention only that the complainant had been imprisoned between 1989 and 1995.

4.7 The State party also takes note of the two letters from members of the complainant's family, dated 5 March 2004 and 6 June 2005, in which they claimed that they were being harassed by the security forces and felt forced to move. It notes that the complainant himself had never felt such a need. The State party finds it surprising that the complainant did not inform the Asylum Review Board of the existence of the letter of 5 March 2004 when he submitted further observations concerning his appeal.

4.8 The State party concludes that the application is completely unfounded and requests the Rapporteur for new complaints and interim measures to lift the interim measures and the Committee to consider the complaint at its earliest convenience.

Comments by the complainant on the State party's observations

5.1 The complainant notes that the appeal lodged with the Geneva Administrative Tribunal has been withdrawn because it is no longer necessary following his release.

5.2 He reiterates the facts, particularly his detention for six years in the Libyan Arab Jamahiriya and the torture to which he was subjected. He refers to a medical certificate issued in April 2006 by a physician of the Geneva University Hospitals who specializes in the treatment of victims of torture and war attesting to the existence of physical and psychological after-effects that are consistent with the complainant's allegations.

5.3 The complainant recalls that, in Switzerland, he continued to take part in activities to promote human rights in the Libyan Arab Jamahiriya and participated in a public demonstration, and that the Libyan services in Geneva closely monitor this type of activity. He claims that he was continually questioned about his actions when he was still in the Libyan Arab Jamahiriya and that his actions in Switzerland were clearly under surveillance. Moreover, he states that his family is regularly questioned about his activities and whereabouts. The complainant refers to a letter dated 5 March 2004 from a friend who visited his family in the Libyan Arab Jamahiriya and who claimed that they were being harassed by the security forces, and advised him not to return home. He refers to a detailed report of the Swiss section of Amnesty International on the deportation of Libyan asylum-seekers to their country of origin.

5.4 The complainant submits the following documents: the decision of the Geneva Administrative Tribunal of 26 September 2005; an attestation from the Libyan internal security service dated 17 May 2003; a copy of a letter from his friend dated 5 March 2004; attestations of support from Libyan non-governmental organizations, as well as copies of several reports of international non-governmental organizations; and the observations and recommendations of the Committee against Torture on reports submitted by the Libyan Arab Jamahiriya in 1999 and 2005.

5.5 With regard to the alleged factual inconsistencies, the complainant denies that they have any bearing on the merits of the case. He claims that his only error is to have stated, at the time of his first interview in Switzerland, that he had left the Libyan Arab Jamahiriya because he could not find any work there. He had felt very ill at ease during that interview and had not been able to express himself clearly. Moreover, he had not really understood what was taking place and what was expected of him: he had been constantly encouraged to be brief. He had nevertheless added that he had always lived in fear in the Libyan Arab Jamahiriya. As can be ascertained from the reports of several international and non-governmental organizations, the situation in the Libyan Arab Jamahiriya has not improved. The complainant considers that, insofar as he had been tortured and persecuted when he lived in the Libyan Arab Jamahiriya, where his family continues to be threatened, and in view of the fact that he is under surveillance in Switzerland, he will again be subjected to torture if he is expelled.

Issues and proceedings before the Committee

Consideration of admissibility

6. Before considering any claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the State party has not contested admissibility. The Committee therefore considers that the complaint is admissible.

Consideration of the merits

7.1 With regard to the merits, the Committee must rule on whether the return of the complainant to the Libyan Arab Jamahiriya would constitute a violation of the obligation of the State party, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.2 The Committee must determine, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he was returned to the Libyan Arab Jamahiriya. In order to take such a decision, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

The Committee recalls its established jurisprudence whereby the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture on return to that country.[b] Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on the implementation of article 3, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he or she were returned to the country concerned, and that the existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, the danger must be personal and present. It also notes that the State party contends that there is no temporal link between the complainant's detention and his flight from the country, and that the complainant's statements contain many inconsistencies and contradictions. It takes note of the information supplied by the complainant in that regard, particularly that he had been ill at ease during his first interview, as well as the documents supporting his application for asylum in Switzerland.

7.4 Nevertheless, and leaving aside his past activities, the complainant has submitted to the Committee in connection with this communication attestations from organizations of Libyan refugees in Europe indicating the support he has provided to their organizations, as well as his earlier political activities before he left the Libyan Arab Jamahiriya, and his relations with opposition religious movements which are banned in the Libyan Arab Jamahiriya and whose members are persecuted. The complainant has also referred to meetings with representatives of the Libyan consular authorities in Geneva, who had objected to his having lodged a request for political asylum. Lastly, he has submitted a copy of a medical certificate dated 24 April 2006 in which a specialist in post-traumatic disorders from a Geneva hospital identified a causal link between the complainant's bodily injuries, his psychological state and the ill-treatment he described at the time of his medical examination. According to this doctor, in his present psychological state, the complainant does not appear capable of coping with a forcible return to the Libyan Arab Jamahiriya, and such coercive action would entail a definite risk to his health. The State party has made no comments in this regard. In the specific circumstance of this case, and in particular in the light of the findings in the above-mentioned medical report on the presence of serious after-effects of the acts of torture inflicted on the complainant, his political activities subsequent to his departure from the Libyan Arab Jamahiriya (as described in paragraphs 2.4 and 5.3 above), and the persistent reports concerning the treatment generally meted out to such activists when they are forcibly returned to the Libyan Arab Jamahiriya, the Committee considers that the State party has not presented to it sufficiently convincing arguments to demonstrate a complete absence of risk that the complainant would be exposed to torture if he were to be forcibly returned to the Libyan Arab Jamahiriya.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention.

9. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Notes

[a] On this subject, see also paragraph 5.1 of this decision.

[b] See, for example, *S.S.H. v. Switzerland*, communication No. 254/2004, decision adopted on 15 November 2005, para. 6.3.

Communication No. 281/2005

Submitted by: Ms. Elif Pelit (represented by counsel)

Alleged victim: The complainant

State party: Azerbaijan

Date of the complaint: 21 September 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2007,

Having concluded its consideration of complaint No. 281/2005, submitted to the Committee against Torture on behalf of Ms. Elif Pelit under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is Ms. Elif Pelit, born in 1972, a Turkish national of Kurdish origin, who at the time of submission of the communication was facing deportation from Azerbaijan to Turkey; she claimed that, in the case of her forced removal to Turkey, she would risk torture in violation of article 3 of the Convention. She is represented by counsel.

1.2 By note verbale of 22 September 2005, the Committee transmitted the complaint to the State party, together with a request, under rule 108, paragraph 1, of the Committee's rules of procedure from the Special Rapporteur on Interim Measures not to deport the complainant to Turkey, while her complaint is under consideration. On 1 December 2005, the State party informed the Committee that it would not deport the complainant, pending the Committee's final decision. Notwithstanding, on 13 October 2006, the State party extradited the complainant to Turkey.[8] By note verbale of 30 April 2007, the State party informed the Committee that the complainant was released from custody by decision of the Istanbul Court for Grave Crimes of 12 April 2007.

The facts as submitted by the complainant

2.1 From 1993 to 1996, the complainant was detained in Turkey on charges of "subversive activities and terrorism" for the PKK (Communist Party of Kurdistan). She was released after her acquittal by the Istanbul State Security Court, based on the insufficiency of evidence. She claims that while in detention, she was tortured, although she does not describe the acts of torture nor provides any medical certificate in corroboration.

2.2 In 1998, the complainant fled to Germany, where she was granted refugee status. In 2002 she began working as a journalist for a pro-Kurdish news agency. In February 2003, she was sent to Iraq to cover the events there. In November 2003, she covered a PKK press conference in northern Iraq, which was broadcast on Al-Jazeera TV. In May 2004, the news agency's office in Mosul was attacked by unidentified armed individuals, who took away her travel documents. On 6 November 2004, she entered Azerbaijan to contact the German Embassy and have her travel documents re-issued. Azerbaijani authorities then arrested her for illegal entry into the country.

2.3 On 3 December 2004, the Istanbul District Court for Grave Crimes sentenced the complainant in absentia to 10 years' imprisonment, for her involvement in subversive activities for the PPK, because she attended a meeting in northern Iraq as a journalist to cover a meeting of PKK members. On 6 December 2004, the Istanbul District Court requested her extradition from Azerbaijan.

2.4 On 17 March 2005, the Sharursk Court in Nakhchivan (Azerbaijan) sentenced her to a fine for illegal entry. Although the court ordered her release, she was arrested in the courtroom by agents of the Ministry of the Interior, who brought her to Baku and placed her in detention. On 2 June 2005, the Court for Serious Crimes of Azerbaijan decided to extradite her to Turkey. On 2 September 2005, the Court of Appeal confirmed this decision. This judgment became executory immediately. On 14 September 2005, the complainant lodged an appeal in the Supreme Court, but this appeal does not have suspensive effect, and she risks extradition at any time.

The complaint

3. The complainant claims that her deportation to Turkey would violate article 3 of the Convention, as there are substantial grounds for believing that, if deported, she would be subjected to torture or other inhuman treatment and forced to confess guilt. She would immediately be taken into custody and questioned by the Department for Fight against Terrorism. In the past years, Azerbaijan has returned an important number of individuals accused of links with the PKK to Turkey.

State party's observations on admissibility

4.1 On 1 January 2005, the State party challenged the admissibility of the communication, because the complainant did not produce sufficient proof in support of her allegation that in case of removal she would be at a foreseeable, real and personal risk of being subjected to torture or other inhuman treatment within the framework of article 3 of the Convention.

4.2 The State party observes that the general situation in Turkey at present does not allow to assume that persons (among them Kurds) deported to Turkey face any danger of torture. In 2003, the Reintegration into Society Act was adopted with the aim to stop the persecution of PKK members; several European Union countries share this view.

4.3 The State party reiterates that, under the jurisprudence of the Committee, a consistent pattern of gross violations of human rights in the country does not give sufficient grounds for the determination of a real risk of being tortured in the event of deportation; there must be "special grounds" indicating that an individual, personally, is facing a threat of being tortured. As pointed out by the Committee, substantial grounds must exist for an individual to claim that he or she faces a foreseeable, real and personal risk of being subjected to torture in the accepting country. The State party recalled the Committee's View that the burden of proof lies on the complainant and the risk of torture must be estimated on more serious grounds than those of mere theory and suspicion.

4.4 According to the State party, the above criteria are inconsistent with the author's allegation, to the effect that she "very probably" would face torture if extradited, because of an event that occurred as long ago as 1995.

4.5 The State party invoked the Committee's general comment No. 1, pursuant to which the risk has to be "highly probable, personal and present". An incident that took place almost 13 years ago cannot be considered as "recent". Besides, the applicant did not present any proof about her mistreatment, as is suggested on items (b) and (c) of the general comment.

4.6 The State party observed that the Committee has constantly affirmed that the appraisal of facts and of proof on a certain case is not a prerogative of the Committee, but of the courts of the States parties to the Convention, if these courts do not violate the principle of independence; according to the State party this is not the case in the complainant's case.

4.7 In the present case, the courts of Azerbaijan have not determined the existence of "special grounds" and the presence of a "real, foreseeable and personal" risk of E.P. having to undergo torture, if returned to Turkey. The complainant also did not carry out any political activity, which would have exposed her to particular risks.

4.8 The State party also affirmed that it has received diplomatic assurances from Turkey about the application of article 14 of the European Convention on Extradition on the "Rule of Specialty" to Ms. Pelit. In case of her extradition, the complainant would not face any criminal prosecution for a crime committed prior to her transfer, other than the offence for which her extradition was requested.

The complainant's comments on the State party's observations

5.1 On 20 February 2006, the complainant commented on the State Party's observations. She reiterates that she was tortured in Turkey during detention between 1993 and 1996. She affirmed that it is generally accepted that prior experiences of torture create a well-founded fear of being again subjected to this form of persecution upon return of a refugee to her country of origin. At that time, she was subjected to torture on suspicion of PKK links. Today the same reasons are the basis of the current extradition request. Thus, according to her, the requirements of article 8 (b) of the Committee's general comment No. 1 are met.

5.2 The complainant reiterated that she has obtained refugee status in Germany, where she claimed past torture during her asylum application, and notes that her past torture was found credible by German authorities.

5.3 As to the State party's affirmation that the situation in Turkey has evolved, she observed that, while Turkey has improved its record on torture, individuals in situations similar to hers have reportedly been subjected to torture in the recent past.

5.4 The complainant noted that the documents[b] presented by the Turkish authorities are vague and unclear. In substantiation, she provided the following translation of a part of an unspecified document: "Considering Elif Pelit's membership in the illegal terrorist organization (as per the article 168.2 of the Penal Code), she is sentenced to arrest in absentia. The arrest term is considered and has started on 2 December 2004 and will thus end on 3 December 2014."

5.5 The complainant claimed that Turkey was seeking her extradition to punish her for her political opinions; her punishment was likely to include torture.

5.6 The complainant requests her immediate release, to enable her to return in Germany, where she enjoys the status of refugee.

Admissibility considerations

6.1 The Committee examined the admissibility of the communication during its thirty-sixth session, in May 2006. It ascertained that the same matter was not and is not being considered under another procedure of international investigation or settlement, and noted that the State party has not objected that domestic remedies have been exhausted. It noted the State party's indication that it had received, from the Turkish authorities, diplomatic assurances in relation to the application in the complainant's respect of the "rule of specialty", pursuant to article 14 of the European Convention on Extradition, and noted that the complainant had not presented any observation in this respect. It further observed that the matter in the present case was not about on which grounds and whether the complainant would be judged in the event of her removal to Turkey, but about whether she would be at risk of torture there.

6.2 The Committee further noted that the State party has challenged the admissibility of the communication because the complainant had failed to produce sufficient proof that in the event of her removal, she would be at a foreseeable, real and personal risk of being subjected to torture or other inhuman treatment within the meaning of article 3 of the Convention. It also noted that the complainant contended the she was tortured in Turkey between 1993 and 1996, on suspicion of PKK links and the same reasons were the basis of her extradition request. The complainant had obtained refugee status in Germany, on these very grounds. Finally, the Committee noted the complainant's claim that although the general situation in Turkey has evolved in the past years, there have been cases of individuals suspected of links with the PKK being subjected to torture. The Committee concluded that the communication was admissible and invited the State party to present its observations on the merits.

State party's observations

7.1 By submission of 9 October 2006, the State party recalls the facts of the case: Ms. Pelit was arrested in Turkey in 1993. In 1996, the Istanbul State Security Court discharged her for lack of evidence. In 1998, she arrived in Germany on forged documents and obtained political asylum there in 1999.

7.2 On 6 November 2004, she was arrested in Azerbaijan and charged with illegal border crossing. When crossing the border, she was accompanied by armed individuals who retired after an exchange of gunfire with Azeri border guards. On 17 March 2005, the Sharursk District Court found her guilty under article 318.2 and fined her. After the payment of the fine, she was released.

7.3 During the preliminary investigation, on 6 December 2004, the Turkish authorities addressed an extradition request to the Ministry of Justice of Azerbaijan. The request was made pursuant to the 1957 European Convention on Extradition, and on the basis of a decision of 3 December 2004 by the Istanbul City Court for Particularly Serious Crimes, under which Ms. Pelit was charged pursuant to article 168/2 of the Criminal Code. An arrest warrant was issued against her in this relation. On this ground, the complainant was arrested again on 17 March 2005 and her case was transmitted to the Azerbaijan Court for Serious Crimes which is competent to deal with extradition cases. On 2 June 2005, this Court authorized the complainant's extradition. An appeal against this decision was filed with the Appeal Court, on 20 June 2005. On 2 September 2005, the Appeal Court confirmed the extradition. On 14 September 2005, the complainant's lawyer filed a cassation appeal in the Supreme Court. On 25 October 2005, the Supreme Court declared itself incompetent to deal with the appeal.

7.4 As to the complainant's allegations that she was granted refugee status and that article 33 of the Refugees Convention should have been applied in her case, the State party notes that she was recognized as a refugee by a German court in 1999. Foreign courts' decisions are not enforceable in Azerbaijan. In order to secure recognition of a foreign court's decision, a specific application should be made by the Supreme Court, under the provisions of the Civil Procedure Code. In the present case, no such request was made to the Supreme Court to have the German court's 1999 decision recognized.

7.5 According to the State party, refugee status is granted in Azerbaijan by the State's Committee on Refugee issues. The complainant was never granted such status. The State party notes that the UNHCR Office in Baku presented a statement to the Court for Serious Crimes, in which it observed that refugee status granted by a party to the 1951 Refugee Convention must be recognized by all other parties to the Convention. The State party assumes that the Baku UNHCR Office referred to letter (f) of the Conclusion No. 12 of the UNCHR's Executive Committee "*On the extraterritorial effect of the determination of refugee status*".[c] However, this conclusion is of recommendatory nature only. The State party invokes another non-binding conclusion of the UNHCR Executive Committee - No. 8 - O*n the Determination of Refugee Status*, according to whose (f), "the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally *desirable*". However, letter (g) of the Conclusion No. 12 provides that "refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases, when it appears that the person manifestly does not fulfil the requirements of the Convention". According to the State party, if there were serious grounds such as "participation in the activities of illegal structures", and information from the Azeri security services that the complainant was an active member of the PKK, the competent State party authorities were right to question the complainant's refugee status.

7.6 According to the State party, Ms. Pelit's case does not fall under the scope of article 1 F (b) of the Refugee Convention, given that she committed a serious crime of non-political character outside of the country which granted her asylum, prior to her arrival in the asylum country. In addition, pursuant to letter (g) of UNHCR Executive Committee Conclusion No. 17,[d] "protection in regard to extradition applies to persons who fulfil the criteria of the refugee definition and who are not excluded from refugee status by virtue of article 1 F (b)".

7.7 According to the State party, the Azeri courts had no reason to consider that the crime for which the complainant's extradition was requested was of a political nature or was related to a political crime, which is needed in order to refuse an extradition request pursuant to the European Convention on Extradition. The Courts noted that Ms. Pelit had been arrested in Turkey on two past occasions, as a suspected member of a terrorist organisation, but had been released because of lack of evidence. This, according to the State party, demonstrates the impartiality of the Turkish courts in her case. The Azeri courts also considered whether the crimes imputed to the complainant constituted crimes under Azeri law (e.g. articles 278 and 279 of the Criminal Code).

7.8 The State party invokes United Nations Security Council resolution 1373 of 28 September 2001, which prohibits the granting of asylum to individuals who finance, plan, support, or perform terrorist acts. The State party recalls the Committee's own statement of 22 November 2001, when the Committee expressed its confidence that whatever responses to the threat of international terrorism are adopted by State parties, such responses will be in conformity with their obligations under the Convention against Torture.

7.9 The State party recalls that letter (f) of UNHCR Executive Committee Conclusion No. 17, stresses that "nothing in the present conclusions should be considered as affecting the necessity for States to ensure, on the basis of national legislation and international instruments, punishment for serious offences, such as the unlawful seizure of aircraft, the taking of hostages and murder". The term "*such as*" indicates that the list of crimes is not exhaustive, and that the 1980 list is obsolete as it does not contains serious crimes recognized by the international community since then (for example terrorism). Azeri courts correctly concluded that Ms. Pelit's acts qualified as serious crimes under paragraph 1 F (b) of the Refugee Convention. Therefore, the principle of non-refoulement does not apply in her case.

7.10 The State party recalls that the overall situation of human rights in Turkey does not permit the belief that individuals in general, and Kurds in particular, who are sent back there, risk to be subjected to torture. After the adoption by Turkey of the Reintegration into Society Act in 2003, numerous acts of persecutions against PKK supporters have ceased. Several European countries share this opinion[e]. Even if a consistent pattern of gross violations exists in a country, this does not, by itself, automatically give sufficient grounds to believe that a real risk of torture exists for an individual who has to be returned there. For the State party, the complainant has not demonstrated that she would likely be subjected to torture if extradited, as she was already tortured in 1993.

7.11 The State party recalls the Committee's jurisprudence that it is not for the Committee but for the States parties' courts to evaluate facts and evidence in a particular case, except if the courts openly violate the principle of impartiality. In the present case, the Azeri courts did not find any "particular grounds" nor the presence of "a real, foreseeable and personal" risk of torture for the complainant. The courts determined that the complainant had not performed any political activities that would make her more vulnerable to a risk of torture in case of her extradition.[f]

7.12 In addition, the Azeri authorities received diplomatic assurances about the application of article 14 of the European Convention on Extradition (rule of speciality). Thus, in the event of the complainant's return to Turkey, she would not be prosecuted for any other crime than the one mentioned in the arrest warrant. The Azeri authorities received clear and convincing diplomatic assurances from Turkey which clearly ruled out torture and other forms of inhuman treatment against Ms. Pelit after extradition. Pursuant to these guarantees, the Azeri authorities have various possibilities to monitoring respect of Ms. Pelit's rights. This, according to the State party, complies with the recommendations of the United Nations Special Rapporteur on Torture in similar situations.

7.13 The State party further notes that the complainant could always complain to the European Court of Human Rights if she considers that her rights are breached.

7.14 With reference to different decisions of the Committee and the European Court of Human Rights, the State party recalls that the alleged risk of torture must be real, and not a mere possibility. The existence of such risk must be corroborated by prima facie evidence. No such evidence was put forward in the present case.

7.15 The State party concludes that the complainant failed to submit sufficient evidence that she faces a foreseeable, real and personal risk of torture and other ill-treatment contrary to article 3 of the Convention.

8.1 On 17 October 2006, the complainant's lawyer informed the Committee that Ms. Pelit had been extradited to Turkey on 13 October 2006. The lawyer has not been informed of this prior to his client's removal.

8.2 In the light of this information, the Committee, acting through its Special Rapporteur on Interim Measures, addressed a note verbale to the State party on 17 October 2006, in which it recalled that failure to respect a call for interim measures of protection undermines protection of the rights enshrined in the Convention. The State party was requested to provide clarifications in relation to the current status and whereabouts of Ms. Pelit.

8.3 On 8 November 2006, the State party reiterated the information contained in its submission of 9 October 2006. It added that it had contacted the Turkish authorities to arrange a meeting of an authorized representative with the complainant, to verify her situation and her health. The State party's submission was transmitted to counsel with a request for comments, but no reply has been received.

8.4 The Committee discussed the situation of the complainant during its thirty-seventh session, in November 2006. It decided to address a letter to the State party. In this letter, dated 24 November 2006, the Committee expressed grave concern about the manner in which the State party acted in the case. The Committee requested the State party to provide it with timely information on the current whereabouts and state of well-being of Ms. Pelit. On 8 February 2007, the State party was once more invited to present comments in this relation.

9.1 On 26 February 2007, the State party produced updated information on the status of the complainant in Turkey. It notes that since the extradition of the complainant, the Azeri Embassy in Turkey has engaged in regular monitoring of the conditions in which the complainant is detained, and a counsellor of the Embassy has had private conversations with her.

9.2 The complainant is currently detained in the penitentiary institution "Gebze M Tipli Kapali Infaz Kurumu" (Gebze City), and in a conversation with her, she had confirmed that she is detained under normal conditions. She has access to her lawyer and may have a phone conversation during five minutes every week. Every day, she is provided with newspapers.

9.3 The State party observes that detainees cannot receive food from outside, but the complainant is provided with meals three times per day. In her conversation with the Embassy counsellor, she expressed general satisfaction about the food, although she noted that sometimes, it was of poor quality. She had passed a medical check in the penitentiary institution and no health problems were detected.

9.4 In another private conversation with the Embassy representative, the complainant confirmed that she had not been subjected to torture or ill-treated by the penitentiary authorities. She also affirmed that her health conditions were satisfactory. The State party adds that it will continue to monitor the complainant's situation.

Issues and proceedings before the Committee

Breach of article 22 of the Convention

10.1 The Committee begins by noting that the author was removed to Turkey on 13 October 2006 despite a request for interim measures pursuant to rule 108 (9) of the rules of procedure, pursuant to which the State party was requested not to remove the complainant while her communication was pending before the Committee.

10.2 The Committee remains deeply concerned by the fact that the State party, after having initially acceded to the Committee's request, later disregarded it and removed the author to Turkey. The State party is requested to avoid such actions in the future. The Committee recalls[g] that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's expulsion of the complainant in spite of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that, by expelling the complainant under the circumstances described above, the State party breached its obligations under article 22 of the Convention.

Consideration of the merits

11. On the merits of the claim under article 3, the Committee has noted that in the present case, the complainant was recognized as a refugee in Germany, as it had been concluded that she would be at risk of persecution if she was returned to Turkey. Her refugee status remained valid at the time of her deportation to Turkey by the State party authorities. The Committee recalls Conclusion No. 12 of the UNHCR's Executive Committee "*On the extraterritorial effect of the determination of refugee status*", pursuant to whose letter (f) "the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States". The State party has not shown why this principle was not respected in the complainant's case, in circumstances where the general situation of persons such as the complainant and the complainant's own past experiences

raised real issues under article 3. The Committee further notes that the Azeri authorities received diplomatic assurances from Turkey going to issues of mistreatment, an acknowledgment that, without more, expulsion of the complainant would raise issues of her mistreatment. While a certain degree of post-expulsion monitoring of the complainant's situation took place, the State party has not supplied the assurances to the Committee in order for the Committee to perform its own independent assessment of their satisfactoriness or otherwise (see its approach in *Agiz v. Sweden*), nor did the State party detail with sufficient specificity the monitoring undertaken and the steps taken to ensure that it both was, in fact and in the complainant's perception, objective, impartial and sufficiently trustworthy. In these circumstances, and given that the State party had extradited the complainant notwithstanding that it had initially agreed to comply with the Committee's request for interim measures, the Committee considers that the manner in which the State party handled the complainant's case amounts to a breach of her rights under article 3 of the Convention.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the extradition of the complainant to Turkey constituted a breach both of articles 3 and 22 of the Convention.

13. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps the State party has taken in response to the Views expressed above.

Notes

[a] See paragraph 8.1.

[b] It is unclear which documents the complainant exactly refers to.

[c] "The Executive Committee: … (f) considered that the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States."

[d] Conclusion No. 17, *Problems of extradition affecting refugees*.

[e] In this relation, the State party refers to the observations made by the Netherlands in the context of communication No. 135/1999, *S.G. v. the Netherlands*, Views (no violation) adopted on 12 May 2004.

[f] The State party refers to letter (e) of the Committee's general comment.

[g] See, inter alia, *Brada v. France*, communication No. 195/2002, Views adopted on 17 May 2005, para. 13.4.

Communication No. 282/2005

Submitted by: S.P.A. (represented by counsel)

Alleged victim: The complainant

State party: Canada

Date of the complaint: 26 September 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 November 2006,

Having concluded its consideration of complaint No. 282/2005, submitted to the Committee against Torture on behalf of S.P.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is S.P.A., an Iranian national born in 1954 in Tonkabon, Iran, currently residing in Canada, from where she faces deportation. She claims that her return to the Islamic Republic of Iran would constitute a violation by Canada of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. She is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 27 September 2005, and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Iran while her complaint is under consideration by the Committee. The State party subsequently informed the Committee that the complainant had not been deported.

The facts as presented by the complainant

2.1 The complainant obtained a nursing degree in 1986 in Iran, and became a supervisory nurse at the Rejai Hospital and a lecturer at the Islamic Azad University of Mahal Salas Tonkabon. One of her responsibilities was the purchase of nursing supplies, including bones and cadavers for teaching purposes. Some time in late 1999, she noticed the poor quality of bones delivered: they showed signs of fractures and it was obvious to her that the individuals had suffered trauma before their deaths. The complainant advised M., the supplier, that she could not use the bones, upon which she wrote a report to the Dean of the University. The next set of bones provided were in perfect condition. Upon querying the origin of this later set of bones, the complainant was informed by M. that the first set were taken from "anti-revolutionary groups" while the second were obtained by raiding an Armenian cemetery. The complainant was distressed by this information and went to the Magistrate for Islamic law to discuss the matter, which she believed was a religious one. The Magistrate advised that he would look into the matter.

2.2 On subsequent occasions the complainant noted that the cadavers delivered were of light skin, and on enquiry was told they had been taken from a Baha'i cemetery. She complained again to the Magistrate, who told her that he had ordered that bodies be taken from the Baha'i cemetery, as their religion was below Islam. The complainant argued with him and was accused of being an anti-revolutionary. That evening, the complainant was arrested without charge in her home and taken to a basement room belonging to the Ministry of Intelligence and Security, where she was interrogated while blindfolded. Despite her explanations, she was accused of insulting the Islamic religion, was tortured and beaten. She was kept in a cell and interrogated every night, still blindfolded. She was beaten with sticks and wires, kicked, insulted and taunted. She was given electric shocks and forced to stand for hours without sleep. The injuries on her head were particularly severe and kept bleeding, and her toes were bruised and bloody.

2.3 After two months and because of her bleeding, she was put into a car one night after midnight and taken for medical care. On the way, the driver stopped, got out of the car and left it unlocked. The complainant got out of the car and climbed into the back seat of the first car which was parked near by. She managed to tell the driver her name and address and asked him to take her home, before she lost consciousness. The driver of the car recognized her, and took her to Rasht where her wounds were tended to. The complainant fell in and out of consciousness. When she recovered she was told that she was in Kermanshar and in a safe place. Those who took care of her for several months advised her to leave Iran. They assisted her in obtaining her passport from her family and through a smuggler she travelled to Dubai and then to Colombia. She advised the smuggler that she did not wish to stay in Colombia and therefore travelled to Turkey, Greece, Spain, Jamaica, Mexico and then Canada. Upon her arrival in Canada on 10 September 2001 she made a claim for refugee status.

2.4 She was subsequently informed by relatives in Iran that the authorities were looking for her and that they had been to her sister's house with several summons for her arrest. They had threatened her daughter and asked to speak to her husband. She was also informed that the driver who was taking her from her detention place to obtain medical care had been bribed, and was supposed to take her back to her family. As she had escaped, her family had not known her whereabouts for a month and a half, at which time the people in Kermanshar had contacted them. Finally, the complainant was told that the people in Kermanshar had been paid by her family to care for her and help her to leave Iran.

2.5 The complainant's application for refugee status on the basis of her political opinion was rejected on 2 May 2003. On 23 May 2003, she filed an application for leave and judicial review of this decision, which was denied on 16 September 2003. On 25 March 2004 she filed an application for consideration under section 25 (1) of the Immigration and Refugee Protection Act (humanitarian and compassionate grounds application, "H&C"), providing new evidence that she had been employed as the Supervisor of Nursing and an Instructor at the University of Mahal Salas Tonekabon. She also submitted a pre-removal risk assessment ("PRRA") application on 13 August 2004, and subsequently submitted new evidence in the form of letters from her daughter and sister, and a court summons dated 22 December 2003 from the Tehran Islamic

Revolutionary Court, requiring her to attend court on 6 January 2004. The H&C and PRRA applications were denied by the same officer and notified to the complainant on 16 August 2005. An application for leave and judicial review of the PRRA and H&C decisions was filed in the Federal Court on 25 August 2004. Her application for stay of removal was denied on 26 September 2005.

2.6 The complainant was scheduled to be deported to the Islamic Republic of Iran on 27 September 2005. The application for leave to apply for judicial review of both the PRRA and H&C decisions was subsequently dismissed on 1 December 2005.

The complaint

3.1 The complainant argues that she would be imprisoned, tortured or even killed if returned to Iran, in violation of articles 3 and 16 of the Convention. This is based on the fact she is a known perceived opponent of the Iranian regime and the fact a passport was applied for on her behalf, thereby alerting the Iranian authorities of her imminent return. There is a court summons in her name, and as she missed the court date, based on objective country information there will most likely be a warrant for her arrest. Counsel refers to the United Kingdom Country Report from the Immigration and Nationality Directorate Home Office from October 2003, which states that the traditional court system in Iran is not independent and is subject to government and religious interference. The report states that trials in the Revolutionary Courts, where crimes against national security and other principal offences are heard, are notorious for their disregard of international standards of fairness. Revolutionary Court judges act as prosecutor and judge in the same case, and judges are chosen for their ideological commitment to the system. Indictments lack clarity and refer to undefined offences such as "anti-revolutionary behaviour". Counsel claims that those accused of "anti-revolutionary behaviour" are dealt with unfairly once detained: although the Constitution prohibits arbitrary arrest and detention, there is reportedly no legal time limit on incommunicado detention, nor any judicial means to determine the legality of the detention. Further, female prisoners are repeatedly raped or otherwise tortured while in detention, and there are widespread reports of extrajudicial killings, torture, harsh prison conditions and disappearances.

3.2 Counsel submits a medical certificate dated 22 June 2005 based on the complainant's Personal Information Form and a clinical interview and exam performed on 17 June 2005, which concludes that there is evidence of multiple scars on her body. Significant wounds are on her face and scalp, and are consistent with a mechanism of blunt trauma as described by her. The irregular depressed scar on the top of her head is said to be consistent with her description of a lesion that was left open and sutured at a later date. The scars on her arms and legs are more non-specific but are consistent with blunt trauma. The bilateral toenail onycholysis is typical for post-traumatic nail injury and could certainly have resulted from being stepped on repeatedly as she has described. The medical report concludes that her psychological history is consistent with Post-Traumatic Stress Disorder-Chronic.

3.3 Counsel argues that the PRRA officer did not assess the risk as the officer seemed to determine that the complainant was not credible, despite this independent physician's report that her injuries were consistent with the information provided in her Personal Information Form. Further, counsel highlights that the PRRA officer did not determine that the warrant for the complainant's arrest was not genuine.

State party's observations on the admissibility and the merits

4.1 On 27 June 2006, the State party argues, on article 3, that the communication is inadmissible as manifestly unfounded as the complainant has not substantiated her allegations even on a prima facie basis. Her communication is based on the same story that competent domestic tribunals have determined to lack credibility and plausibility. On article 16, the complainant has made no attempt to substantiate her claim and it is therefore also inadmissible as manifestly unfounded. Apart from the complete absence of evidence on this point, according to the Committee's jurisprudence, the potential aggravation of a complainant's state of health possibly caused by deportation does not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16.[a]

4.2 With regard to the scope of article 3, the State party recalls that it refers to "substantial grounds" for believing that a person would be in danger of being subjected to torture, and that the Committee's general comment on article 3 places the burden on the complainant to establish that she would be in danger of being tortured. The grounds on which a claim is established must be substantial and must "go beyond mere theory or suspicion", as confirmed by the Committee in numerous decisions. Consideration of the relevant factors leads to the conclusion that there are no substantial grounds for believing that the complainant would be in danger of being subjected to torture. In particular, her credibility is highly suspect and her claim inconsistent and implausible. There are no credible reasons to consider that she fits the personal profile of someone who would be of interest to the Iranian authorities or particularly vulnerable if returned to the Islamic Republic of Iran.

4.3 With regard to the credibility and plausibility of the allegations and the Committee's scope of review, the State party concedes that the Committee does not expect complete accuracy from the complainant. What is required is that the evidence may be considered "sufficiently substantiated and reliable".[b] Nevertheless, important inconsistencies in the present case are "pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return".[c] It is not the role of the Committee to weigh evidence or re-assess findings of fact by domestic courts, tribunals or decision-makers.[d] The complainant's allegations and supporting evidence are identical to that submitted to competent, impartial domestic tribunals and decision-makers and that were found not to support a finding of risk in Iran. The analysis of the evidence and the conclusions drawn by the Immigration Refugee Board as well as by the PRRA officer who assessed the risk to which she may be exposed if returned to the Islamic Republic of Iran were appropriate and well-founded.

4.4 The State party recalls that the Committee cannot review credibility findings "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice". The complainant made no such allegations and the material submitted does not support a finding that the Board's decision suffered from such defects.[e] Nothing suggests that domestic authorities had any doubts concerning their assessment, nor is there any evidence that the domestic authorities' review was anything other than fully satisfactory: the complainant is simply dissatisfied with the results of the domestic proceedings and the prospects of deportation, but made no allegations or produced any evidence that the proceedings were in any way deficient. Accordingly there are no grounds on which the Committee could consider that it is necessary for it to re-evaluate the findings of fact and credibility made by the domestic tribunals. Nevertheless, should the Committee be inclined to assess the credibility of the complainant, a focus on some of the more important issues clearly supports a finding that the complainant's story simply cannot be believed.

4.5 With regard to her role at the University, the complainant asserted in her Personal Information Form that she was in charge of purchasing all supplies necessary for the nursing faculty and that the University had an arrangement for six years with the supplier of bones. However, in the oral testimony, she stated that she was in charge of ordering bones and that these began to be ordered in 1998, only one year before her problems began. With regard to her arrest and torture, she stated in her Personal Information Form that she recognized the voice of her first cousin, a member of the Ministry, as one of her interrogators. However, in the oral testimony, she stated that her first cousin was among those who arrested her.

4.6 With regard to the complainant's account of her escape, the State party shares IRB's assessment that it was "unbelievable" and "exaggerated and implausible". In any case, even if it were accepted that the man who was driving her to the medical centre had been bribed by her family, it is implausible that he would leave to allow her to get into another car which coincidentally belonged to someone who recognized her, and that this stranger would not take her to a hospital if she was bleeding and had fainted. It is also not plausible that she would live in a house full of strangers yet not know even after four months of living with them who they were or what their names were, and would not ask to contact her family during all that time.

4.7 With regard to her exit from the Islamic Republic of Iran, the complainant's Personal Information Form indicated that strangers helped her obtain her passport from her family. However, in her oral testimony, she claimed that she left Iran with a false passport. She claims that she needed an exit visa; it was implausible that she would have received such a visa if she was escaping the authorities. The State party shares the finding of the IRB that it is "practically impossible to leave Iran through the Tehran airport if a person is sought by the Iranian authorities. It is also almost impossible to obtain false passports because of the many check-ups conducted before getting on the plane". The complainant has not submitted any evidence that would be capable of casting doubt on this finding.

4.8 With regard to the delay in seeking refugee protection, the complainant travelled for two months through Colombia, Turkey, Greece, Spain, Jamaica and Mexico before coming to Canada and filing a refugee claim. The delay in making a refugee claim detracts from her credibility. Under domestic and international refugee law jurisprudence, a delay in filing a refugee claim is a relevant factor to be taken into account in assessing whether the complainant has a subjective and objective fear of persecution.

4.9 With regard to the existence of a summons, although the refugee claim was made in September 2001, the complainant failed to present documentary evidence to corroborate her claim before it was heard in November 2002. Although she was in telephone contact with her family, she did not tell the IRB if there was an arrest warrant out in her name, and it was not until her claim was rejected that she submitted, as part of her PRRA application, a "summons" dated 22 December 2003. It is implausible that a summons would be issued more than two years after the complainant's alleged escape from detention. If the authorities had been looking for her since her escape, it is implausible that her family would have simply destroyed the other notices of summons as their letters claim, nor even mentioned the existence of the notices during their phone conversations with her. The State party thus shares the PRRA officer's findings about the minimal probative weight of the purported summons. In addition, there is no evidence or allegation that any member of her family was detained or mistreated. With regard to the existence of an arrest warrant, the State party emphasizes that there is no such warrant despite the complainant's claims.

4.10 As far as the medical evidence is concerned, the complainant produced a medical report dated 22 June 2005 in support of her PRRA application. The PRRA officer did not consider the report to be probative of future risk, because the physician's opinion was based on his/her consideration of the complainant's Personal Information Form and a clinical interview. The existence of scars does not, by itself, establish that the complainant had been a victim of torture in the past or would face a substantial risk of torture in the future. In the light of the complainant's overall lack of credibility and the implausibility of central aspects of her claim, particularly since it is unsupported by other independent and reliable evidence, the alleged cause of the scarring is implausible. Most significantly, the scarring, while perhaps evidence of past torture is insufficient to substantiate that the complainant would be at risk of torture *in the future*.

4.11 Finally, although the State party concedes that the general human rights situation in Iran is poor and deteriorating, it notes that because the country to which the complainant would be returned is Iran does not by itself constitute sufficient grounds for determining that she would be in danger of being subjected to torture upon her return.[f]

Complainant's comments on the State party's observations on admissibility and merits

5.1 On 6 September 2006, the complainant argues that the jurisdiction of the Committee *does* include an independent review of the facts.[g] Its role would be redundant if it were merely to follow the decisions of domestic tribunals without any independent assessment of the case.[h] Further, IRB, the only comprehensive evaluation of her case, failed to recognize the effects of torture or trauma on a person's ability to recount her story. With regard to her credibility, the complainant argues that the evidence of four independent medical and psychological experts as well as letters from the Vancouver Association for Survivors of Torture about her psychological state and the scars on her body corroborate her account of being tortured. She recalls that torture affects one's ability to recount traumatic experiences in a coherent and consistent manner, and that complete accuracy is seldom to be expected from victims of torture, especially those suffering Post-Traumatic Stress Disorder.

5.2 With regard to the State party's argument that the complainant's case has been reviewed by "competent, domestic tribunals", and firstly as to the Immigration and Refugee Board (IRB), the complainant notes that there is no reference whatsoever to training of IRB members on the effects of trauma or torture. There is also no reference to training on how IRB members understand or use medical and psychological reports as a tool in the assessment of credibility. The complainant recalls that at no time during the hearing did the IRB member appear to recognize that she displayed classic symptoms of trauma. The IRB member who heard her refugee application on 28 November 2002 had limited, if any, expertise in the effects of trauma or torture. Consequently, the member was distracted by minor inconsistencies in the testimony and failed to give due weight to the expert report of a psychologist, which was filed with the IRB on 10 September 2003. Since the IRB member found the complainant not credible, the psychological assessment was ignored. In other words, the member assessed the complainant's credibility without considering the effects of depression and PTSD, then dismissed the psychological report as irrelevant.

5.3 While the State party argues that the complainant benefited from several reviews by independent, competent tribunals after the refugee hearing, she submits that this is a misleading description of the process for failed refugee claimants. Indeed, judicial review is an extremely narrow remedy, available only on technical legal grounds, and applicants must obtain leave from the Court before they can proceed to judicial review. From 1998 to 2004, the Federal Court denied leave in 89 per cent of cases. Of the 11 per cent who were granted leave, only 1.6 per cent of negative decisions by the IRB were overturned by the Federal Court.

5.4 With regard to the PRRA, the complainant recalls that its scope is limited to "new evidence", not arguments that the initial decision by the IRB was wrong, and that in 2003 only 2.6 per cent of PRRA applications were approved. She also recalls that she submitted new evidence which her family had sent her and that had not been available at the time of the IRB hearing. She filed a medical report confirming the scars on her body, evidence that she worked at Azad University, and a writ of summons issued by the Tehran Islamic Revolutionary Court. The PRRA officer rejected her application in July 2005 on the basis of lack of corroborating evidence. She emphasized that her jurisdiction was limited to review of "new evidence" and refused to consider the newly available documents relating to the complainant's employment at the University because, in her opinion, the documents should have been obtained *before* the refugee hearing and therefore could not be considered as new evidence. In fact, the documents were found in storage at the complainant's mother's home.

5.5 While the PRRA officer did not contest that there was significant, unusual scarring on the complainant's head, scalp and body, she dismissed the medical report because the doctor's opinion was based on a "clinical interview" with the complainant and a review of her Personal Information Form. These comments reflect a complete lack of training or understanding about the nature of medical evidence. Thus, the complainant argues that crucial medical and psychological evidence have never been properly considered at any stage of the refugee process. The dismissal by the PRRA officer of the medical evidence was arbitrary, unreasonable and completely incorrect. As to the writ of summons, the PRRA officer accorded it "minimal weight", drawing on research concerning criminal proceedings in Iran. This is an inappropriate comparison as the writ indicates that it was issued by the Islamic Revolutionary Court, which presides over religious matters.

5.6 With regard to the H&C decision, the complainant recalls that the Committee has noted its limitations[i] and that in the present case the H&C review and the PRRA were performed by the same officer. In her decision on the H&C, the officer referred to her findings in the PRRA and many of the paragraphs in the PRRA are copied verbatim in the H&C. It is submitted that the H&C was not an independent review and suffered from the same flaws as the PRRA.

5.7 With regard to inconsistencies in her testimony, the complainant submits that none of them go to the heart of her account and that her overall account has always been consistent. She recalls that the Committee has frequently acknowledged that complete accuracy is seldom to be expected by victims of torture.[j] It has also held that a medical diagnosis of Post-Traumatic Stress Disorder is a relevant factor in considering whether inconsistencies detract from a claimant's credibility.[k] Finally, as to the delay in seeking protection, the Convention relating to the Status of Refugees does not require that a refugee seek protection in the first State to which he flees.

5.8 With regard to the human rights situation in the Islamic Republic of Iran, the complainant recalls that the Committee has previously taken note of the serious human rights situation in Iran in finding that an applicant should not be refouled to that country.[l] She submits that the situation in Iran has not improved, and recalls that the General Assembly has recently expressed serious concern at the continuing human rights violations taking place there.[m] The Committee has persuasive evidence corroborating that the complainant was tortured by the Iranian authorities, and in Iran a history of detention and torture is a significant indicator of future risk.[n]

Issues and proceedings before the Committee

Examination of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do so under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has raised an objection to admissibility based on the fact that the complainant, in its view, has not substantiated her allegations even on a prima facie basis and that therefore the communication is manifestly unfounded. As to the complainant's claims under article 16 of the Convention, the Committee notes that no arguments or evidence have been submitted in substantiation of this claim, and therefore the Committee concludes that this claim has not been substantiated for the purposes of admissibility. This part of the communication is thus inadmissible.

6.3 As to the allegations made pursuant to article 3 of the Convention, the Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone. The Committee therefore declares the communication admissible as to the allegations made under article 3 of the Convention.

Merits of the communication

7.1 The issue before the Committee is whether the forced return of the complainant to Iran would violate the State party's obligation pursuant to article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.2 The Committee recalls its general comment No. 1 on article 3,[o] which states that it is to assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk need not be "highly probable", but it must be "personal and present". In this regard, in previous decisions the Committee has determined that the risk of torture must be "foreseeable, real and personal".[p]

7.3 In assessing the risk of torture in the present case, the Committee notes that the complainant has claimed that she was arrested and detained for around two months in early 2001 by Iranian authorities, and that during this period she was tortured. It also notes the complainant's contention that there is a foreseeable risk that she would be tortured if returned to Iran, on the basis of her previous detention and torture, the fact the State party applied for a passport for her, and the court summons which, according to the complainant, will result in an arrest warrant as she did not appear before the court as required.

7.4 The Committee also notes the complainant's argument that the PRRA, H&C and subsequent judicial review procedures are flawed, as the officer who concluded both procedures deemed that the court summons and proof of the complainant's employment as a nurse were not "new evidence" which she had to take into account during the PRRA. On this point the Committee considers that the judicial review procedure, while limited to appeal on points of law, did examine whether there were any irregularities in the PRRA and/or H&C determinations.

7.5 The State party has pointed to inconsistencies and contradictions in the complainant's testimonies which, in its opinion, cast doubt on the veracity of her allegations. The State party has specifically highlighted inconsistencies relating to the complainant's story on her role at the University, her arrest, torture, and escape from detention, her exit from Iran and delay in seeking refugee protection, and finally the summons for court and the lack of evidence of an arrest warrant. The Committee draws the attention of the parties to its general comment No. 1 according to which the burden to present an arguable case is on the author of a complaint. Here, the Committee notes that the complainant has provided a court summons and documents purporting to refer to her employment at the University. However the Committee deems that the complainant has not submitted sufficient details or corroborating evidence to shift the burden of proof. In particular, she has not adduced satisfactory evidence or details relating to her detention or escape from detention. Further, she has failed to provide plausible explanations for her failure or inability to provide certain details which would have been of relevance to buttress her case, such as her stay for over three months in Kermanshah and the names of those who helped her to escape. Finally, the Committee deems that she has failed to provide plausible explanations for her subsequent journey through seven countries, including some asylum countries, prior to finally claiming refugee status in Canada.

7.6 The Committee notes that the complainant's arguments, and the evidence to support them, have been presented to the State party's courts. The Committee reiterates in this regard that it is for the courts of the State parties to the Convention, and not the Committee, to evaluate facts and evidence in a particular case. It is for the appellate courts of States parties to the Convention to examine the conduct of a case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the officers had clearly violated their obligations of impartiality. In this case, the material before the Committee does not show that the State party's review of the complainant's case suffered from such defects.

7.7 Finally, the Committee, whilst noting with concern the numerous reports of human rights violations, including the use of torture, in Iran, must reiterate that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. On the basis of the above, the Committee considers that the complainant has not substantiated that she would personally face such a real and imminent risk of being subjected to torture upon her return to Iran.

7.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention, considers that the complainant has not substantiated her claim that she would be subjected to torture upon return to Iran and therefore concludes that the complainant's removal to that country would not constitute a breach of article 3 of the Convention.

Notes

[a] The State party refers to communication No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, para. 10.2.

[b] The State party refers to communication No. 34/1995, *Aemei v. Switzerland*, Views adopted on 9 May 1997, para. 9.6.

[c] Communication No. 148/1999, *A.K. v. Australia*, Views adopted on 5 May 2004, para. 6.2; and communication No. 106/1998, *N.P. v. Australia*, Views adopted on 6 May 1999, para. 6.6.

[d] The State party refers, inter alia, to communication No. 148/1999, *A.K. v. Australia*, Views adopted on 5 May 2004, para. 6.4.

[e] The State party refers, inter alia, to communication No. 223/2002, *S.U.A. v. Sweden*, Views adopted on 22 November 2004, para. 6.5.

[f] The State party refers, inter alia, to communication No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.6.

[g] Counsel refers to communication No. 258/2004, *Dadar v. Canada*, Views adopted on 23 November 2005, para. 8.8.

[h] Ibid.

[i] Counsel refers to communication No. 133/1999, *Enrique Falcon Ríos v. Canada*, Views adopted on 23 November 2004.

[j] Counsel refers to communications No. 21/1995, *Ismail Alan v. Switzerland*, Views adopted on 8 May 1996; and No. 41/1996, *Pauline Muzonzo Paku Kisoki v. Sweden*, Views adopted on 8 May 1996.

[k] Counsel refers to communication No. 43/1996, *Kaveh Yaragh Tala v. Sweden*, Views adopted on 15 November 1996.

[l] Ibid., para. 10.4.

[m] Counsel refers to resolution 60/171, adopted in March 2006.

[n] Referring to *Tala* where the Committee held that "his history of detention and torture should be taken into account when determining whether he would be in danger of being subjected to torture upon his return".

[o] A/53/44, annex XI, adopted on 21 November 1997.

[p] Communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.

Communication No. 286/2006

Submitted by:	M.R.A. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	17 January 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2006,

Having concluded its consideration of complaint No. 286/2006, submitted to the Committee against Torture on behalf of M.R.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is M.R.A., an Iraqi citizen born in 1960, currently awaiting deportation from Sweden to Iraq. He claims that his deportation to Iraq would constitute a violation by Sweden of article 3 of the Convention against Torture. He is represented by counsel.

1.2 By note verbale of 17 January 2006, the Committee transmitted the complaint to the State party, together with a request under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Iraq pending the Committee's consideration of his complaint.

Facts as presented by the complainant

2.1 In 1995, the complainant, who is Shia-Muslim, left Iraq for Lebanon, allegedly because of problems he had in Iraq in relation to his family members' political involvement. In September 1995, he was recognized as a refugee by UNHCR in Lebanon. Due to the difficult situation for refugees in Lebanon, he left the country by boat in 1997 together with other Iraqis, but the boat capsized. The complainant, who was collected by Israelis, applied for asylum in Israel and sought Israeli protection against being returned to Iraq.

2.2 The complainant's enemies in Iraq, including his former wife and her new husband, informed the media in Iraq that he had sought asylum in Israel. According to the complainant, this fact was spread in Iraq and he was accused of having converted to Judaism. Counsel indicates that the situation of Jews, and of anyone who is seen to collaborate with Judaism, is difficult in Iraq. To illustrate this point, she refers to a fatwa issued in June 2003 according to which every Jew who buys land or a house in Iraq must be executed and it is forbidden for all Iraqis to sell land or houses to people who might be Jewish. While the complainant initially claimed that a fatwa had been issued against him, counsel submits a copy of the fatwa, and refers to correspondence with Professor H. from Lunds University. According to him, that fatwa is probably taken from a book of fatwas written by a Shia religious authority and is not specifically issued against the complainant. The fatwa allows anyone to kill people who collaborate with Jews or who have abandoned the Islamic religion. According to Professor H., the complainant's life is probably at great risk because many people in Iraq believe that he has abandoned Islam. The complainant submits a letter from the President of the Swedish Muslim Association confirming that a mere rumour that a person has converted to Judaism is sufficient to put that person's life at risk, and recommending the Swedish authorities not to deport the complainant to Iraq.

2.3 The complainant claims that the situation in Iraq remains extremely violent and unstable. Due to the chaotic situation there, it is unlikely that he can get protection from the authorities.

The complaint

3. The complainant claims that his deportation to Iraq would constitute a violation of article 3 of the Convention, as he has a strong fear of being punished with death or being tortured or exposed to inhuman or degrading treatment because of the general situation in Iraq, the fatwa, and the fact that he applied for asylum in Israel and has been accused of having collaborated with Judaism.

State party's observations on the admissibility and the merits

4.1 On 5 July 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party indicates that the complainant entered Sweden on 20 September 1999 and applied for asylum on 23 September 1999. He has provided conflicting information at different stages of the asylum proceedings.

4.2 During his initial interview held upon arrival, he stated that he belonged to an oppressed family in Iraq, and that following the intifada, both he and two of his brothers were wanted by the police. After his brothers left the country, he became a wanted person because his brothers were considered as traitors. He left Iraq in 1995 and went to Lebanon, where he temporarily received refugee status. In 1997, he left Beirut on a boat, but the boat went astray and ended up in Israel, from where he was expelled to Lebanon. In reply to a direct question from the interviewer, the complainant stated that he had not been politically active and had not been a member of any political party. He added that he had been detained from January to November 1983 and had been accused of not informing the authorities about the relatives' membership in a political party. During the interrogations while in detention, he was battered by the Iraqi police.

4.3 In an interview on 17 November 1999, the author added the he had joined the INC (Iraqi National Congress) in 1992 and that he had been involved in the attempts to form a new government in Salahaddin. On 10 May 2000, the Immigration Board rejected the complainant's application for asylum and ordered that he should be expelled to the Netherlands in accordance with the Dublin Convention.[a] It stated that the author had provided false or contradictory information concerning his travel route to Sweden, that he had absconded from the asylum proceedings in the Netherlands, and that he had omitted to inform the Board of these proceedings.

4.4 On 20 June 2000, the complainant was arrested by the Swedish police, as he was suspected of smuggling heroin and aggravated drug offence. By a judgement of 7 March 2001 of the District Court of Norrköping, the author was convicted as charged. Fourteen other men were also convicted in this context. The Court considered the complainant and two of his brothers to be the leading organizers of systematic criminal activities involving smuggling, sale and resale of heroin.[b] He was sentenced to eight years' imprisonment and the Court ordered his expulsion from Sweden with a permanent prohibition to return. When determining the length of imprisonment, the Court took into consideration the inconvenience the expulsion would cause him. Because the Immigration Board had considered that he could be expelled to the Netherlands, no assessment was made with respect to a potential expulsion to Iraq. In a judgement of 8 June 2001, the Göta Court of Appeal upheld the author's conviction and sentence. On 9 July 2001, the Supreme Court denied the author leave to appeal.

4.5 On 25 March 2003, the complainant requested the Government to cancel the expulsion order, on the grounds that absolute impediments under chapter 8, section 1, of the Aliens Act,[c] were at hand. He stated that he had received information that he would not be granted entry to the Netherlands and that he would therefore be expelled to Iraq, where he would face death penalty, because he was involved in a family feud. On 17 July 2003, the Government rejected his request for cancellation of the expulsion order, as it found no impediments against enforcement of the expulsion order.

4.6 On 7 December 2004, the author lodged a new application for asylum and a residence permit. An in-depth interview was held with the author on 1 December 2004, in the presence of counsel. He stated inter alia that when he left Lebanon by boat in 1997, he had been discovered by Israeli ships and taken to Israel for interrogations. He claimed that he would be regarded as an Israeli spy by the Iraqi authorities and that it is generally believed in Iraq that he has converted to Judaism. According to Islamic laws, followers of Judaism shall be sentenced to death and executed. The complainant himself does not regard Jews as human beings. A fatwa was issued against him, which allowed his wife to divorce him without his permission.

4.7 On 19 January 2005, the Migration Board rejected the author's application for asylum and a residence permit. The Board stated that the situation in Iraq was not such that there was a general need for protection or that there was reason to grant residence permits on humanitarian or other grounds. It considered that there was no oppression or persecution of citizens by the central governmental authorities after the fall of the former totalitarian regime. The Board also found it unlikely that incidents which had taken place nearly 10 years earlier would be associated with the author or attract any interest from people in general or religious communions in Iraq. The Board considered that the complainant would be able to turn to local authorities for protection if needed and concluded that he was not in need of protection in Sweden. The Aliens Appeals Board, after assessing the general situation in Iraq and the author's particular situation, upheld the decision on 5 September 2005.

4.8 On 13 October 2005 the complainant again requested the Government to cancel the expulsion order issued by the District Court of Norrköping and the Göta Court of Appeal. On 10 November 2005, his request was rejected. On 21 October 2005, the author was conditionally released from penitentiary detention, but was taken into detention awaiting his expulsion to Iraq. Steps were taken to carry out the expulsion on 17 January 2006.

4.9 Further to the Committee's request for interim measures under rule 108 of the Committee's rules of procedure, the Minister decided to stay the enforcement of the expulsion order pending the Committee's consideration of the case. The complainant remained in detention due to his personal circumstances and to the risk that he would go into hiding or engage in criminal activities in Sweden if released. The complainant challenged the decision of the Minister of Justice to keep him in detention but the Administrative Supreme Court upheld the decision on 27 March 2006. A new application for asylum under the temporary wording of the 1989 Aliens Act was also rejected without having been considered on the merits.

4.10 On the admissibility, the State party indicates that it is not aware of the present matter having been submitted to another procedure of international investigation or settlement. It also acknowledges that domestic remedies have been exhausted in this case. Finally it argues that the claim that the complainant is at risk of being treated, upon return to Iraq, in a manner that would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention.

4.11 On the merits, the State party contends that the communication reveals no violation of the Convention. The State party refers to the Committee's jurisprudence[d] that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.

4.12 The State party recognizes that the general political and security situation in Iraq remains unstable in large parts of the country and that much reconstruction is still needed. The central and western Sunni-dominated areas, including Baghdad, are those most affected by violence, but southern Iraq and the region around Basra are also insecure. Violence between Iraqis with sectarian overtones has increased. However, northern Iraq is regarded as relatively secure. The general elections that were held on 15 December 2005 moved the political process in Iraq into a new phase, and Iraq has now a democratically elected Government with a four-year mandate. Iraq has ratified several human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

4.13 The State party concludes that the situation in Iraq is such that there is no need for protection as defined in the 1989 Aliens Act or that the situation is such that there is reason to grant residence permits on humanitarian or other grounds. This applies in particular to the areas in northern Iraq that have been under Kurdish control since 1991. Moreover, many Iraqis have voluntarily returned to their country of origin after the fall of Saddam Hussein's regime.

4.14 As to the *personal risk* of torture, the State party draws the Committee's attention to the fact that several provisions of the 1989 Aliens Act reflect the same principle as the one laid down in article 3, paragraph 1, of the Convention, in particular chapter 8, section 1, of the Act.[e] It refers to the Committee's jurisprudence[f] that, for the purposes of article 3 of the Convention, the individual concerned must face a *foreseeable, real and personal risk* of being tortured in the country to which he is returned. In addition, it is for the author to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable.[g]

4.15 The State party understands the communication to be founded primarily on the claim that the complainant risks being arrested, tortured and executed upon return to Iraq as a consequence of the incidents which allegedly took place in 1997 in Israel and Lebanon. The State party recalls that the complainant's account of the incidents in 1997 have been the subject of assessments by the Migration Board in 2004 and by the Aliens Appeals Board in 2005. Moreover, the issue of impediments to expulsion has been assessed by the Government in 2003 and 2005. On both occasions the Government found that there were no impediments to expulsion. All those authorities have come to the conclusion that the complainant would *not* be at risk of being subjected to torture if he were expelled to Iraq.

4.16 The State party claims that the complainant's return to the State party would not entail a violation of article 3 of the Convention. It submits that it is unlikely that an alleged incident which took place nearly 10 years ago would be associated with the author or attract any interest in Iraq. If the complainant would experience problems in southern Iraq, he would have the possibility of going to northern Iraq, where he lived before he left his country.

4.17 In addition, the State party submits that there are serious doubts about the complainant's general veracity. His account of the events contains a number of inconsistencies and shortcomings. Although the State party is aware of the Committee's view that complete accuracy can seldom be expected from victims of alleged torture, it considers that the inconsistencies must be held against him in an assessment of his credibility. The State party refers to the complainant's contradictory or false information concerning his travel route to Sweden, and to his absconding from, and omission to inform the Swedish authorities of, the asylum proceedings in the Netherlands. When he was confronted with this information, he admitted that he had applied for asylum there, but opposed being expelled to that country. The complainant also submitted contradictory information concerning his wife and divorce.

4.18 The State party submits that the complainant has not provided any substantial evidence as to the events in 1997, or of his claim that he is widely known to the Iraqi people or the religious communions in Iraq. He has not presented any tangible evidence that a fatwa has been issued against him. The lack of evidence should be noted in view of the fact that during the asylum proceedings the complainant provided clearly conflicting information on essential aspects. In addition, it refers to counsel's submission and Professor H.'s statement that the fatwa is not specifically issued against the complainant.

4.19 The State party argues that the complainant has a weak link to the Swedish society and that he stayed in Sweden as an asylum-seeker for a period of only nine months before being arrested and convicted for smuggling heroin and aggravated drug crimes to eight years' imprisonment. According to a taped telephone conversation between the author and his mother invoked by the prosecutor as evidence in Göta Court of Appeal, the main purpose of his stay in Sweden was "business".

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 On 28 July 2006, counsel commented on the State party's observations. On the admissibility, counsel refutes the State party's claim that the communication fails to rise to the basic level of substantiation required for purposes of admissibility. She refers to UNHCR's earlier refugee statement and the letters from Professor H. and the President of the Swedish Muslim Association. She maintains that there is a great risk that the complainant will be tortured or even killed if forcibly returned to Iraq and claims that the communication is admissible.

5.2 On the merits, counsel refutes the State party's argument that an incident which took place 10 years ago would not be of interest to the people in general or religious communions in Iraq. She refers to Professor H.'s and the President of the Swedish Muslim Association's conclusions.

5.3 On the complainant's credibility, counsel submits that many asylum-seekers fail to disclose their travel route, for various reasons. She submits that this does not however mean that the asylum-seeker is untrustworthy. She invokes the principle on the benefit of the doubt and refers to UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (paras. 203 to 205).[h] She adds that the complainant's statement is coherent and plausible and does not run counter to generally known facts. It is a fact that he and others were on Israeli television and that a fatwa can and probably will be used against him.

5.4 On the State party's contention of lack of evidence, counsel refers to UNHCR's handbook,[i] according to which it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. The complainant immediately informed the Swedish authorities of the 1997 events and the consequences they may have on him. Counsel refers to Professor H.'s correspondence, where he stated that on the basis of the facts relating to the complainant, he could not provide a confident assessment of the risks that he may face if forcibly returned to Iraq. However, he indicated that due to the fatwa and the complainant's time in Israel, he could be in danger if returned.

5.5 Counsel criticizes the State party's reference to the taped telephone conversation, which was quoted out of its context. The complainant's link to Sweden is not weak. His mother, brother and sister live there, while he has no relatives left in Iraq.

5.6 Counsel argues that the complainant has committed a crime and has been sentenced to eight years' imprisonment. He has served his time and, according to a Swedish concept of justice, a person who has served his punishment is free of guilt. He was also sentenced to expulsion. However, the complainant was to be expelled to the Netherlands, not to Iraq.

5.7 Counsel contends that the situation in Iraq remains extremely violent and unstable. Different kinds of sabotages occur every day and different groups are fighting concerning the new regime and there are still violent demonstrations on the foreign military presence in the country: 100 Iraqi citizens are killed every day and, at the date of counsel's comments, over 6,000 civilians had been killed the previous two months. Due to the well-known chaotic situation in Iraq, it is unlikely that the complainant can be given protection in Iraq.

5.8 As to the State party's contention that the complainant could live in Kurdistan, counsel submits that the complainant is originally from Al Quasem, 100 kilometres outside Baghdad. Because of the harassments he was subjected to owing to his family's political involvement, he moved to the northern part of Iraq during the 1992-1995 period. While living there, he was accused of being a spy and was even arrested by the Kurds. The situation in Kurdistan for a

Shia Arab is not better than in the rest of Iraq. Arabs are given a three-month residence permit and thereafter have to report to the police. After the invasion, thousands of families were forcibly deported from Kurdistan.

Issues and proceedings before the Committee

6. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee further notes that the State party does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies and that the complainant has sufficiently substantiated his allegations for purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether the complainant's removal to Iraq would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Iraq, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.4 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".[j]

7.5 In the present case, the Committee observes that the complainant's allegations that he would risk being tortured if returned to Iraq rely on the fact that he applied for asylum in Israel in 1997, that he has been accused of having converted to or collaborated with Judaism, and on the general situation in Iraq. The Committee notes the State party's allegations that the complainant has failed to produce evidence as to the events in 1997, as to his claim that he is widely known to the Iraqi people or the religious communions in Iraq. The Committee notes in particular that the complainant has not converted to Judaism and that there is no indication as to who accused him of having done so, nor any evidence that he is believed in Iraq to have done so, or to have applied for asylum in Israel.

7.6 The Committee has taken note of the complainant's argument that he was sentenced to expulsion to the Netherlands and not to Iraq. The Committee observes, however, and is satisfied, that during the asylum proceedings, the Swedish authorities assessed the consequences of a removal to Iraq.

7.7 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Iraq would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

8. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Iraq does not reveal a breach of article 3 of the Convention.

Notes

[a] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

[b] The Court also noted that the availability of heroin in Norrköping had increased and the prices had decreased after the complainant's organization had been established, and that the availability of heroin had decreased and the prices increased after the arrest of the complainant and his accomplices.

[c] According to chapter 8, section 1, of the 1989 Aliens Act (in force at the time the complainant's case was considered), there was an absolute impediment against expelling an alien to a country where there were reasonable grounds to believe that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment. A risk of persecution would also generally constitute an impediment against enforcing an expulsion decision.

[d] Communication No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3

[e] See footnote 3 above.

[f] Communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden,* Views adopted on 5 May 1999, para. 9.7.

[g] Communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.4, and communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.4.

[h] (2) Benefit of the doubt

"**203.** After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

(3) Summary

205. The process of ascertaining and evaluating the facts can therefore be summarized as follows:

(a) The applicant should:

(i) Tell the truth and assist the examiner to the full in establishing the facts of his case.

(ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence.

(iii) Supply all pertinent information concerning himself and his past experience in as much detail as is necessary to enable the examiner to establish the relevant facts. He should be asked to give a coherent explanation of all the reasons invoked in support of his application for refugee status and he should answer any questions put to him.

(b) The examiner should:

(i) Ensure that the applicant presents his case as fully as possible and with all available evidence.

(ii) Assess the applicant's credibility and evaluate the evidence (if necessary giving the applicant the benefit of the doubt), in order to establish the objective and the subjective elements of the case.

(iii) Relate these elements to the relevant criteria of the 1951 Convention, in order to arrive at a correct conclusion as to the applicant's refugee status."

[i] See above.

[j] A/53/44, annex IX, para. 6.

Communication No. 296/2006

Submitted by:	E.V.I. (not represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	2 June 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2007,

Having concluded its consideration of complaint No. 296/2006, submitted to the Committee against Torture by E.V.I. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is E.V.I., an Azerbaijani national born in 1979, currently awaiting deportation from Sweden. He claims that his forced return to Azerbaijan would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 13 June 2006, and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Azerbaijan while his complaint is under consideration by the Committee. The State party subsequently informed the Committee that the complainant had not been deported.

The facts as presented by the complainant

2.1 The complainant graduated from a university in Azerbaijan with a degree in law and then pursued a master's degree in the Netherlands. As a university student in Azerbaijan, he became actively involved in politics and joined the "Musavat" opposition party, where he worked as a legal consultant. He also worked as assistant to the chief editor in the *Yeni Musavat* newspaper.[a]

2.2 Shortly after his return to Azerbaijan from the Netherlands, the complainant was called to appear at the offices of the Ministry of National Security, where he was kept in custody for two days, accused of "high treason and espionage against the Azerbaijani Government". In particular, he was accused of spreading information in Europe about serious human rights violations in Azerbaijan. During the two days that he was in custody, he was allegedly beaten by officials, as a result of which he developed kidney problems, from which he has continued to suffer after his arrival in Sweden, and "black tumours". He was released due to lack of evidence. He attempted to file a complaint about the incident with the city prosecution office but the officers there refused to register the complaint and told him to keep silent about the incident and not to make any further trouble. The complainant states that he was expelled from the bar association in Azerbaijan on 24 December 2002 following persecution by the Ministry of National Security.

2.3 In the run-up to presidential elections held on 15 October 2003, the complainant was actively involved in the election campaign on behalf of the leader of the "Musavat" opposition party. On 2 July 2003, he was detained by three officers and led to a police station, where the officers referred to the fact that his future wife was half Armenian, and accused him of being a spy working for the Armenian Government. The allegations raised during his first period of detention were raised again. He was kept in custody from 2 to 4 July 2003. The mother of the complainant, who had witnessed his arrest, contacted the complainant's friends and colleagues, who called the ANS TV channel. As a result, several journalists went to the police station and the incident was broadcast in local news. The complainant was released from custody on the same evening of the said broadcast.

2.4 On 18 July 2003, the complainant celebrated his wedding. The same officers from the Ministry of National Security disrupted the wedding celebrations, shouting through the microphones, and one of them physically assaulted the complainant's wife. That same day, the complainant and his wife escaped Azerbaijan to the Dagestan autonomous republic of the Russian Federation. His wife suffered trauma and internal bleeding as a result of the assault and was operated on at Derbend city hospital in Dagestan. From Derbend city, the complainant and his wife travelled to Moscow. On 9 August 2003, they left the Russian Federation and arrived in Sweden three days later. Upon arrival in Sweden, on 12 August 2003, they applied for asylum.

2.5 On 22 December 2004, their application for asylum was dismissed by the Migration Board, which ordered that the complainant and his wife be expelled to their country of origin. The decision of the Migration Board was appealed to the Aliens Appeals Board but the appeal, which included a petition on behalf of the newborn child of the complainant and his wife, was rejected on 28 November 2005. The Migration Board re-examined the case on its own initiative under a new temporary law introduced on 15 November 2005 and concluded, by decision dated 19 May 2006, that no resident visa should be granted on humanitarian grounds.

The complaint

3. The complainant alleges that, if forcibly returned to Azerbaijan, he would suffer a risk of torture, in violation of article 3 of the Convention. He fears being tortured because of his prior treatment at the hands of the Azerbaijani authorities because of his membership of, and activities on behalf of, an opposition political party. He refers to a criminal investigation against him, which commenced since his departure from Azerbaijan. He contends that the Swedish authorities disregarded his personal circumstances and that their decisions refer to general arguments concerning the situation in Azerbaijan only and not his particular case.

State party's observations on the admissibility and the merits

4.1 On 11 December 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party indicates that the complainant applied for asylum on 13 August 2003.

4.2 On claiming asylum, the complainant and his wife were not able to produce identity papers. An official at the Swedish Migration Board recorded that the complainant's wife had had to undergo emergency surgery on her stomach after having been beaten in Azerbaijan. Later on during the proceedings, the complainant submitted an identity card from a young lawyers' association and a copy of his birth certificate, together with some documentation in respect of his wife.

4.3 An initial interview was conducted with the complainant and his wife on 7 November 2003. During the interview, the complainant set out the facts of his case largely as set out above. He stated that shortly after his arrival in Sweden, his father, who was well known due to his high position in the oil industry in Azerbaijan, was assaulted by the Security Police. His father was taken to hospital where he died on 25 August 2003. According to the death certificate, his father died of a heart condition, although he had never suffered from heart problems before. The complainant stated that his mother had been dismissed from her work. The complainant's wife also stated that, after they had left Azerbaijan, her mother, who had been in hiding in Azerbaijan for quite a long time, was arrested and subjected to physical abuse. Her mother died in prison as a result of the beatings.

4.4 A second interview, which took nearly three hours, was conducted with the complainant on 26 March 2004 in the presence of counsel. The complainant gave further details concerning his treatment at the hands of the authorities, including having been made to stand for 35-36 hours during the period of detention immediately following his return from the Netherlands. He stated that he was hit when he tried to sit down and that the Security Police use a kind of boxing glove to prevent leaving traces of the abuse. He stated that he had also been abused during his second period of detention but that he had not suffered any serious injuries. He stated that he had first come to the attention of the authorities in the winter of 2000 when he took part in organizing a demonstration. He received phone calls but was not arrested. He recounted two instances where the Security Police had searched his office. He noted that his mother had received notice a month previously that the Ministry of the Interior had issued a warrant for his arrest for being a traitor to his country. A second interview was conducted with the complainant's wife on 18 May 2004 in the presence of counsel. The complainant's wife submitted the complainant's Musavat party membership card and a warrant for his arrest dated 15 January 2004.

4.5 On 22 December 2004, the Migration Board dismissed the applications of the complainant and his wife and ordered that they be expelled to their country of origin. The Migration Board considered Azerbaijan's status as a member of the Council of Europe and the fact that international and domestic NGOs are allowed to work in the country. It concluded that, while there remain some deficiencies with regard to respect for human rights in Azerbaijan, including with regard to the treatment of opposition political parties by the police, the general situation in Azerbaijan did not per se constitute a ground to grant asylum to the complainant and his wife. With regard to the particular circumstances alleged by the complainant, the Migration Board found that he did not hold such a prominent position within the Musavat Party to warrant particular attention from the authorities. The authenticity of the arrest warrant dated 15 January 2004 was questioned.

4.6 On 3 June 2005, the complainant and his wife appealed the decision of the Migration Board to the Aliens Appeals Board. They submitted further supporting documentation, including a protocol from the Security Police dated 2 July 2003, (which stated that the complainant, who was referred to as the vice chief editor of the *Yeni Musavat* newspaper, had been placed in detention due to suspicions of having spread secret information detrimental to State security), together with certificates concerning the complainant from various human rights organisations in Azerbaijan.

4.7 On 1 July 2005, the complainant and his wife lodged an application for asylum on behalf of their newborn child. The Aliens Appeals Board considered this application along with the appeal of the complainant and his wife.

4.8 On 28 November 2005, the Aliens Appeals Board rejected the appeal on similar grounds to those advanced by the Migration Board. The Aliens Appeals Board also questioned the complainant's credibility. It concluded that the complainant's Musavat membership card was not authentic and that two of the certificates presented by the complainant from Azerbaijani organizations were not genuine. The Aliens Appeals Board based its conclusions on its prior general knowledge of Musavat membership cards, a signature submitted to it in person by an alleged signatory of one of the certificates, together with direct telephone and e-mail contact with an alleged signatory of another of the certificates. Further, the Board had received confirmation that the chief editor of the Musavat newspaper denied that the complainant "had worked as a vice chief editor or as a writer for the newspaper". It was not satisfied by the complainant's explanations, which tended to question the veracity of the persons who had allegedly provided the certificates in the first place, when confronted by the information gathered by the Board.

4.9 The Migration Board re-examined the case in respect of the complainant and his family on its own initiative under a new temporary law introduced on 15 November 2005 and concluded, by decision dated 19 May 2006, that no resident visa should be granted on humanitarian grounds.

4.10 On the admissibility, and with regard to whether domestic remedies have been exhausted in this case, the State party notes that on 7 June 2006 the complainant's wife lodged a further application with the Migration Board for residence permits for herself and her family. The State party notes that such application has not yet been considered and that a decision by the Migration Board can be appealed to a migration court. The State party leaves it up to the Committee to decide whether all domestic remedies have been exhausted in this regard. Finally, it argues that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it is manifestly unfounded and so does not rise to the basic level of substantiation required for purposes of admissibility for an alleged breach of article 3. The State party refers, for this conclusion, to its arguments on the merits, set out below.

4.11 On the merits, the State party contests that the communication reveals a violation of the Convention. It refers to the Committee's jurisprudence[b] that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.

4.12 With regard to the general situation concerning human rights in Azerbaijan today, the State party points to Azerbaijan's membership of the Council of Europe and that Azerbaijan has ratified several major human rights instruments, including the Convention. While noting reports of human rights abuses, including arbitrary detentions and incidents of beating and torture of persons in custody by the security forces, particularly of prominent activists, the State party shares the view of the Migration Board that the situation in Azerbaijan at present does not warrant a general need for protection for asylum-seekers from Azerbaijan.

4.13 As to the personal risk of torture, the State party refers to the Committee's jurisprudence[c] that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In addition, it is for the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable.[d] It draws the Committee's attention to the fact that several provisions of both the 1989 Aliens Act and the new Aliens Act, which came into force in March 2006, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The State party points out that the Swedish authorities therefore have to apply the same kinds of test as the Committee will apply when examining a subsequent complaint under the Convention.

4.14 The State party claims that the complainant's return to Azerbaijan would not entail a violation of article 3 of the Convention. It submits that great weight must be attached to the decisions of the Swedish migration authorities, as they are in a very good position to assess the information submitted in support of an asylum application and to assess the credibility of an applicant's claims. The State party notes that the Migration Board conducted two interviews with the complainant and had ample time to assess the facts and documentation concerning the application.

4.15 In addition, the State party submits that there are serious doubts about the complainant's general credibility and the reliability of the information submitted. The State party submits a report, dated October 2006, obtained through the Swedish embassy in Ankara, Turkey, from an international organization working in Azerbaijan with, it is reported, an excellent local network. The report states that the complainant has never been a member of the Musavat party and that the documents submitted by the complainant in support of his asylum applications are false. The report examines each of the complainant's Musavat party membership card, certain of the certificates relating to the complainants' membership of the Musavat party and his position within the Musavat party newspaper, the arrest warrant dated 15 January 2004 and the protocol concerning his detention dated 2 July 2003 in turn and concludes that they are each false. The report states that the complainant has never been wanted in relation to the commission of a crime in Azerbaijan as there is no information concerning him in the State registration organization. The report further states that the complainant has never been a member of the Lawyers' Association of the Azerbaijan Republic and that the father of the complainant died in 1996, rather than on 25 August 2003, as was claimed in his initial interview before the Migration Board.

4.16 The State party also claims that the complainant's account of the events in Azerbaijan contain a number of inconsistencies, primarily with regard to his position on the staff of the *Musavat* newspaper, and that the complainant's story concerning the beatings and the importance of his political activities have escalated both during the course of his asylum application and before the Committee. The State party notes that the complainant has not presented a medical certificate regarding the kidney problems he claims he continues to suffer from after his arrival in Sweden.

4.17 The State party submits that the complainant has not shown substantial grounds for believing that he will run a real and personal risk of being subjected to treatment contrary to article 3 of the Convention if deported to Azerbaijan. It contends that even if the complainant could be considered to have been a member of the Musavat party, he could not be considered to be a prominent person at risk from the authorities based on his activities and level of responsibility within the party, including the *Musavat* newspaper. The State party notes that the Musavat party is an officially registered and legal organization and that party membership is not a criminal offence. It emphasizes that almost four years have passed since the complainant's political activities are said to have taken place and that in that time a number of presidential pardons have been issued in favour of certain persons whom the Council of Europe considers to be political prisoners. It remarks that the Musavat party has lost much of its position as a major opposition party, having won only 5 of the 125 seats in the November 2005 parliamentary election.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 By letter of 6 February 2007, the complainant reiterates that the admissibility criteria have been met. With regard to the merits, and specifically the State party's concerns about his veracity and its claim that the documentation submitted by the complainant is false, the complainant points out that many people in Azerbaijan are afraid to get involved in such cases as it would possibly lead to investigation by the police or the national security services. With regard to the complainant's position in the *Musavat* newspaper, he states that he was not allowed to explain his position at the newspaper during his initial interview on the basis that he would be afforded an opportunity to do so at his second interview.

5.2 The complainant criticizes the report obtained by the State party through its embassy in Ankara, stating that the investigation was not conducted discreetly and many people were aware that somebody was seeking information about him. He asserts that a report resulting from an investigation conducted in this way should not be relied upon. With regard to the State party's concerns about contradictions in his statements, the complainant states that the translators offered to them were mostly Azerbaijanis with Iranian origins who speak the old Azeri language mixed with Persian which is hard for asylum-seekers to understand. He notes that, in consultation with his counsel, he made 17 corrections to the minutes of one of his interviews.

5.3 In addressing the fact that the complainant has not presented a medical certificate for consideration, he states that both he and his wife contacted Växjö Hospital in Sweden several times to request documents concerning his medical condition but the documents were not forthcoming. He notes that, at his request, his former counsel had also attempted to get these documents without success.

5.4 With regard to the authenticity of the arrest warrant dated 15 January 2004, the complainant states that the police authorities in Azerbaijan work differently to their counterparts in Europe in that all cases are not registered, particularly those relating to persons involved in politics, and information concerning arrest warrants cannot necessarily be obtained in all cases. The complainant believes that the authorities probably did not register the case against him in order to create an image of respect for procedural rights.

Additional comments by the State party

6.1 On 22 March 2007, the State party submitted the following additional comments.

6.2 With regard to the interview process before the Swedish migration authorities, the State party notes that the complainant was interviewed twice. On the first occasion, the interview lasted 1 hour and 45 minutes and an interpreter translated into Russian. The investigator read out the minutes to the complainant and the complainant stated that everything was correct. On the second occasion, the interview lasted 2 hours and 55 minutes and an interpreter translated into Azeri. The complainant, through his counsel, submitted comments on what he considered to be errors in the minutes of this interview on 17 June 2004. On the second occasion, the interview was conducted in the presence of the complainant's counsel. The complainant also submitted comments on the translation of some official documents on 21 October 2005. The State party submits that the complainant therefore had ample time to explain and develop his reasons for seeking asylum in Sweden. The State party maintains that the asylum investigation was carried out properly and thoroughly, the complainant having had the opportunity to correct any possible misunderstanding of his statements.

6.3 With regard to the complainant's criticism of the report obtained by the State party through its embassy in Ankara, the State party stresses that there is nothing to indicate that there are any reasons for questioning the reporting organization's working methods or the qualities of its inquiries or conclusions and so sees no reason not to rely on the result of the inquiry made in the present case. As regards the complainant's assertion that he could not obtain a medical certificate in Sweden, the State party responds that there is nothing to indicate that it would have been impossible for him to acquire such a document following a medical examination upon arrival in Sweden.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the requirement, under article 22, paragraph 5 (b), of the Convention, that all available domestic remedies be exhausted, the Committee notes that the complainant's wife has lodged an additional application before a national body seeking residence permits on behalf of herself and her family. The Committee further notes that as the present communication was lodged by the complainant only, the State party has, as far as the circumstances permit, expressly limited itself to addressing the position concerning him only. It observes that the State party has not provided any further information concerning the particular basis of the additional national application made by the complainant's wife or whether it may be considered to be effective. The Committee further notes that the State party has not placed any emphasis on this issue, or made any particular objection in this regard, preferring instead to leave it up to the Committee to determine whether all available domestic remedies have been exhausted. Accordingly, the Committee finds it appropriate to determine that the requirements of article 22, paragraph 5 (b), of the Convention have been met as regards the complainant.

7.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone.

7.5 Accordingly, the Committee finds the communication admissible and proceeds to consideration of the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

8.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims that he was arrested and detained for periods of two days on two occasions by Azerbaijani authorities, and that during this period he was tortured. It also notes his assertion that there is a foreseeable risk that he would be tortured if returned to Azerbaijan, on the basis of his political activities, his previous detentions and torture and the outstanding arrest warrant.

8.5 The Committee observes that the State party questions the complainant's credibility and the authenticity of the documentation submitted by him, based on the investigations of the Swedish Aliens Appeals Board and the expert report obtained through its embassy in Turkey. In particular, the State party has questioned the complainant's position within the Musavat party, and at the Musavat party newspaper, and the authenticity of the Musavat party membership card, the alleged decision of detention dated 2 July 2003, the arrest warrant dated 15 January 2004 and the certificates of various Azerbaijani organizations.

8.6 The Committee recalls that according to its general comment No. 1, the burden to present an arguable case is on the complainant of a complaint (A/53/44, annex IX, para. 5). It recalls its jurisprudence that it is for the complainant to collect and present evidence in support of his account of events.[e] While the complainant has provided various copy documents to the State party and the Committee, the Committee considers that the complainant has failed to disprove the State party's findings and to validate the authenticity of the various documents in question. He has also failed to give any satisfactory response to submissions made by the State party concerning certain issues of fact, such as, for example, with regard to the death of his father, which he had stated was allegedly connected to his political activities. Further, he has not been able to provide any medical evidence to support his claims of mistreatment at the hands of the Azerbaijani authorities.

8.7 The Committee reiterates that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. On the basis of the above, the Committee has formed the opinion that the complainant has not submitted sufficient satisfactory details or corroborating evidence to substantiate the fact of his detentions by, and treatment at the hands of, the Azerbaijani authorities or the alleged criminal investigation against him and the related arrest warrant. The Committee considers therefore that the complainant has not substantiated that he would personally face such a foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan.

9. The Committee Against Torture, acting under article 22, paragraph 7, of the Convention, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Azerbaijan and therefore concludes that his removal to that country would not constitute a breach of article 3 of the Convention.

Notes

[a] The complainant notes that the chief editor was arrested and sentenced to 5 years' imprisonment in 2003.

[b] Communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3 and Communication No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

[c] Communication No.103/1998, *S.M.R. and M.M.R. v. Sweden,* Views adopted on 5 May 1999, para. 9.7.

[d] General comment No. 1 concerning implementation of article 3 of the Convention, A/53/44, annex XI, adopted on 21 November 1997; communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.4 and communication No. 265/2005, *A.H. v. Sweden,* Views adopted on 16 November 2006, para. 11.6.

[e] *S.L. v. Sweden*, communication No. 150/1999, Views adopted on 11 May 2001, para. 6.4; and *M.Z. v. Sweden*, communication No. 256, Views adopted on 17 May 2006, para. 9.5.

Communication No. 298/2006

Submitted by:	C.A.R.M. et al.
Alleged victims:	The complainants
State party:	Canada
Date of the complaint:	26 June 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 18 May 2007,

Having concluded its consideration of complaint No. 298/2006, submitted by C.A.R.M. et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainants, C.A.R.M. et al., Mexican nationals, are currently located in Canada, where they applied for asylum on 12 November 2002. Their application was rejected on 11 March 2004. The complainants claim that their return to Mexico would constitute a violation by Canada of article 3 of the Convention against Torture. They are represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 28 June 2006, requesting the Government to provide information and observations on the admissibility and substance of the allegations. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested the State party not to deport the complainants while their complaint was being considered. In a note verbale dated 29 June 2006, the State party informed the Committee that it was acceding to that request.

1.3 On 27 September 2006, the State party requested that the interim measures should be lifted. On 19 October 2006, the Special Rapporteur on new communications suspended the interim measures.

The facts as submitted by the complainant

2.1 In 1995, C.A.R.M. became the head of SIMA Computación, a company in San Andrés Cholula, Puebla State, Mexico, which specialized in the sale, installation and maintenance of computer equipment. His company was awarded a contract by an accountant to supply computer equipment for the town hall. In the course of his work for the town hall, C.A.R.M. witnessed irregularities and acts of corruption on several occasions.

2.2 In 2002, C.A.R.M. submitted a tender for the installation of equipment in the town hall offices. The accountant allegedly called him into his office to tell him that a friend of the mayor had also put in a tender at an inflated price and asked him to write a letter explaining the differences in the prices. Subsequently, on 22 August 2002, the mayor's secretary, who was also the mayor's nephew and acted as his spokesman, summoned him to ask why he had written such a letter. He suggested that C.A.R.M. should also inflate his prices and that he should use materials of inferior quality and give a percentage of the profits to the mayor. During this conversation the mayor was in the next room with the door open. C.A.R.M. rejected the suggestion.

2.3 On 22 September 2002, C.A.R.M. was informed by the mayor's secretary that he no longer had access to the town hall. C.A.R.M. then warned him that he would lodge a complaint with the Revenue Bureau. The secretary informed him that they had contacts and were protected by the Government. C.A.R.M. was subsequently contacted once more by the accountant, who told him that he appreciated his work and the fact that he had been honest and that he had arranged the disagreement between him and the mayor. He also told him that he had been awarded a contract for the installation of computer equipment in the municipal prison. This work, which was carried out between 25 September and 11 October 2002, involved prisoner-identification equipment. C.A.R.M. thus had access to the list of prisoners. At that point, the prison director informed him that key members of the Gulf Cartel were held in the prison and that his work would be dangerous, since the purpose of the system was to keep them under surveillance.

2.4 On 11 October 2002, C.A.R.M. received two telephone calls from the accountant, who informed him that his computer installation had been destroyed and that persons having ties to prisoners protected by the mayor intended to kill him and his family. The accountant advised him to leave the country. C.A.R.M. and his family left San Andrés Cholula the same day and took refuge in a hotel in Mexico City. Several days later, a friend of the family went to their house and found that it had been ransacked. There were several police officers at the site, who asked her to tell them if she had any news of the family. The complainants immediately decided to leave the country for Canada.

2.5 On 16 October 2002, the complainants left Mexico by air for Canada. They were admitted as visitors for a period of six months. On 12 November 2002, they appeared before Citizenship and Immigration Canada in Montreal and claimed refugee status. On 11 March 2004, the Canadian Immigration and Refugee Board concluded that they were not refugees under the Convention, or persons requiring protection. The Board noted several inconsistencies in C.A.R.M.'s testimony, concerning in particular the question of whether or not the mayor had been present during the meeting on 22 August 2002 and the content of telephone conversations C.A.R.M. claimed to have had with the accountant on 11 October 2002. Moreover, the Board had not been satisfied with C.A.R.M.'s explanation as to why he had not mentioned to the immigration officer at his first interview that he and his family had been threatened by Gulf Cartel drug traffickers. At his interview with an immigration officer on 12 November 2002, C.A.R.M. stated that he was being persecuted by the mayor. In his Personal Information Form and in his testimony to the Board, he stated that he was afraid of members of the Gulf Cartel who had ties to prisoners protected by the mayor. During the asylum procedure, C.A.R.M. explained that he had been afraid for the accountant and that he feared deportation if the officer thought him a criminal because he did not know the country's laws.

2.6 On 6 April 2004, the complainants applied for leave and for judicial review of the Board's negative decision. On 23 June 2004, the application for leave to appeal was rejected by the Federal Court of Canada.

2.7 On 1 September 2005, the complainants were offered a pre-removal risk assessment (PRRA). A PRRA application was submitted by the complainants on 16 September 2005. The following supplementary information and documents were submitted to the Canadian authorities in the course of this procedure.

2.8 The complainants lodged a complaint with the Mexican police, which was submitted on 17 February 2005 by C.A.R.M.'s half-brother, who was kidnapped and had his van stolen in the month of February. In the course of this episode, one of his assailants asked him where the complainants were. According to his half-brother, the assailants were police officers, but his lawyer had allegedly advised him not to include that information in his police statement. The complainants also mention a letter dated 16 September 2005, sent by their family firm, stating that "someone" was trying to obtain further information about them. The letter advised the complainants not to return to Mexico. The complainants also submitted an article dated 19 May 2004 from the Internet, which stated that a person named Rafael Cielo Ramírez, the director of San Pedro Cholula prison, had disappeared after a warrant for his arrest had been issued for assault and threats against the deputy mayor of San Rafael.

2.9 The complainants submitted a new report on their psychological state. They had undergone two psychological evaluations, one in November 2003, during the Immigration and Refugee Board procedure, and the other in September 2005, conducted by the same psychologist, who had concluded that they were suffering from post-traumatic stress disorder and that that condition had been triggered by their vulnerable status and their fear of being sent back to their own country. L.G.U. suffered from a deep depression, accompanied by suicidal thoughts. The complainants claimed that the whole family, and particularly L.G.U., was in a fragile psychological state and required attention and an appropriate environment to avoid irreparable damage.

2.10 In support of their allegations concerning the human rights situation in Mexico, the complainants submitted reports issued by Governments, non-governmental organizations and experts. These included reports from the Department of State of the United States of America and Amnesty International (2006).

2.11 The PRRA procedure issued its decision on 3 March 2006, its conclusion being that the complainants had not convincingly demonstrated that they were at personal risk of retaliation by the former mayor of San Andrés Cholula, drug traffickers in his pay or corrupt police officers. The decision stated that, according to case law, it must be assumed that a State was capable of protecting its citizens, except in the case of a total collapse of State structures, which was not the case in Mexico.

2.12 On 8 June 2006, the complainants applied for visa exemption and permanent resident status on humanitarian grounds. At the same time, they applied for an administrative suspension of their deportation so that their case could be reviewed on humanitarian grounds. Their application for suspension of the deportation order was rejected on 13 June 2006. They subsequently submitted an application for suspension to the Federal Court.

2.13 On 27 June 2006, the complainants informed the Committee that their application for suspension had been rejected that day by the Federal Court. They had been given only a few minutes to express their views and the hearing had lasted less than 20 minutes, whereas it ought to have lasted approximately two hours. The complainants explained that the judge had criticized them for not having applied to the Federal Court for judicial review of the negative decision of the PRRA procedure. They had tried to explain that their former lawyer had been tired by the number of negative decisions issued both by the PRRA officer and the Federal Court and that there were serious grounds for the application for a suspension. The judge had not, however, allowed them to develop their argument and had rejected their application. They considered that they had not had a fair hearing.

The complaint

3.1 The complainants allege that the Immigration and Refugee Board rejected their asylum request unjustly and erroneously. The Board had concluded that there were discrepancies in C.A.R.M.'s testimony whereas, in fact, no such discrepancies existed. With regard to the question of whether the mayor was present or not at the meeting on 22 August 2002, they explained that C.A.R.M. had spoken with the mayor's secretary, who spoke on the mayor's behalf while the mayor himself was at that moment in an adjoining office with the door open. They emphasize that there is no discrepancy in this part of C.A.R.M's statement. As for the alleged discrepancy concerning the officers who were persecuting them and the reason that C.A.R.M. had not mentioned that they were being threatened by Gulf Cartel drug traffickers, the complainants state that C.A.R.M. had said that he was afraid of individuals having ties to prisoners protected by the mayor and that he was being sought by the police and the mayor. The complainants state that the person principally involved in their persecution was the mayor, who acted also through members of the Gulf Cartel and corrupt police officers. Once again, there was no discrepancy in C.A.R.M.'s story.

3.2 Moreover, C.A.R.M. had been nervous at his interview, since he was not familiar with Canadian law and was afraid of being deported to his own country. The complainants note that at that stage interviews are conducted very quickly, and C.A.R.M. had not had time to give a full explanation. They also point out that the Refugee Appeal Division provided for under the new Immigration and Refugee Protection Act had not yet been established, which meant that there had been no possibility of appeal.

3.3 The complainants state that they are in danger anywhere in Mexican territory. The mayor of San Andrés Cholula, the drug traffickers under his protection and the corrupt police officers can easily find them and execute them. The State is incapable of ensuring the complainants' protection. They draw attention to reports on the human rights situation in Mexico, including a report issued by Amnesty International in 2006. They consider that they have submitted sufficient documentary evidence to show that human rights violations are widespread in Mexico and that the State is unable to protect victims.

3.4 With regard to the PRRA decision, the complainants state that the officer in charge of the procedure did not take the reports on their psychological state, particularly that of L.G.U., seriously. They say that their deportation to Mexico would cause her and the whole family irreparable harm. They reject the assertion by the PRRA officer that their distress and feelings of stress at the prospect of deportation to Mexico had not been questioned and that such symptoms were common among people in such situations. They consider that the officer was not qualified to determine whether their psychological state had been caused by distress and feelings of stress in the face of possible deportation to Mexico or by the post-traumatic stress disorder diagnosed by the psychologist.

3.5 The PRRA officer also overlooked the very convincing evidence presented in support of the complainants' allegations of corruption, impunity and lack of adequate protection in Mexico and was selective in his handling of the evidence. The officer rejected outright the information regarding the kidnapping of C.A.R.M.'s half-brother and the letter from the family friend bearing out the fact that the complainants were still being sought, claiming that the letter was not part of an ongoing correspondence and did not come from an independent source. Yet the officer had never checked to determine whether an ongoing correspondence existed. Lastly, with regard to the Internet article, the officer, while not disputing the fact that the complainant had installed computer equipment in the prison and that the prison director was wanted for assault, threats and embezzlement, simply rejected the complainants' claim on the grounds that their allegations of persecution by the former mayor and the drug traffickers in his pay had not been proved.

3.6 The complainants state that the obligation to exhaust all domestic remedies exists only if such remedies are adequate and there is a real opportunity to be heard by the courts, which is not the case with the PRRA and judicial review.

State party's observations on admissibility

4.1 In a note verbale dated 28 September 2006, the State party disputes the admissibility of the complaint on the grounds that domestic remedies have not been exhausted and the complainants have not established a prima facie case for the purpose of admissibility.

4.2 With regard to the exhaustion of domestic remedies, the State party submits that, after the negative PRRA decision of 3 March 2006, the complainants ought to have applied for leave and for judicial review of the decision before the Federal Court of Canada and should also have applied to the Federal Court for a suspension of their deportation pending the outcome of the judicial review. Yet they had not done so. The State party states that the complainants did not challenge the PRRA decision, despite the numerous complaints against that decision raised in their communication.

4.3 The State party asserts that, in order to obtain leave to apply for judicial review, the complainants needed to show only that they had an "arguable case", which required a lesser burden of proof than that required for judicial review on the merits. The State party explains the procedure for applying for judicial review. It cites the communication *T.A. v. Canada,*[a] which demonstrates the usefulness and effectiveness of an application for stay and review before the Federal Court. In that decision, the Committee acknowledged that applications for leave and judicial review "are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case". The complainants, however, did not apply for judicial review of the PRRA decision and indicated that they considered the remedy in question unlikely to produce a satisfactory outcome. The State party also cites the Committee's conclusions with regard to the communication *M.A. v. Canada,*[b] in which the Committee observed that "it is not within the scope of the Committee's competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author's claims".

4.4 The State party observed at the time that the application for a visa exemption and permanent resident status in Canada on humanitarian grounds submitted by the complainants on 8 June 2006 was another remedy that was not exhausted. Once a decision had been taken under that remedy, other remedies would be available, namely an application to the Federal Court for leave and for judicial review. The complainants could also request suspension of their deportation on humanitarian grounds if they were still in Canada at the time of the decision. The State party reiterates that the complaint is inadmissible because the complainants have failed to exhaust domestic remedies.

4.5 The State party maintains that C.A.R.M.'s allegations are not credible and that there is no evidence that returning the complainants to Mexico was likely to cause them irreparable harm. The State party recalls the facts alleged by the complainants in their application for asylum and also the Canadian Immigration and Refugee Board decision of 11 March 2004. It notes that their complaint is based on the same facts and virtually the same evidence as that submitted to the Canadian authorities and is thus almost identical to their application regarding a visa and permanent resident status in Canada on humanitarian grounds.

4.6 The State party recalls the discrepancies noted by the Canadian Immigration and Refugee Board and the explanations given during that procedure. It considers that the additional explanations given by C.A.R.M. in his complaint are not credible. The State party affirms that the argument that C.A.R.M. forgot to mention the Gulf Cartel because he always claimed that the "person principally involved in his persecution" was the mayor and that "the person principally involved includes the others" is particularly unconvincing. The earlier explanations indicate that he knowingly omitted any mention of the Gulf Cartel because he was afraid for the accountant and for himself. Moreover, C.A.R.M.'s testimony does not corroborate the claim that the mayor was "the person principally involved" and that the Cartel or the police were trying to kill him on his behalf. C.A.R.M. stated in his Personal Information Form that he was being sought by "agents of the Gulf Cartel" and that it was the prisoners, and not the mayor, who were "very upset" with him "for having installed the new surveillance technology". It is unlikely that the mayor wanted to kill C.A.R.M. and his family for having installed a surveillance system in the municipal prison, since it was he who had asked C.A.R.M. to undertake the project.

4.7 The State party also rejects C.A.R.M.'s second explanation as to why he was too nervous and too rushed to accurately identify his persecutors during the interview on 12 November 2002, which was too short. According to the State party, the immigration officer asked C.A.R.M. several questions about the identity of his persecutors and gave him ample opportunity to explain who was looking for him and why. C.A.R.M.'s anxiety cannot in itself explain the discrepancies that exist with regard to such an important part of his account.

4.8 Another discrepancy identified by the Immigration and Refugee Board has to do with C.A.R.M.'s meeting at the town hall on 22 August 2002. During his interview with the Board, C.A.R.M. spontaneously stated that he was alone with the mayor's secretary when the latter told him that he should inflate his prices and hand part of the profit over to the mayor. Yet C.A.R.M.'s Personal Information Form contains a different version of the encounter, in which the complainant states "… I arrived, the mayor and his secretary, who was his nephew, told me that they had agreed to continue working with me". When confronted with this discrepancy, C.A.R.M. explained that he was alone with the secretary but that the mayor could have followed the conversation by listening on his telephone loudspeaker. During his interview on 12 November, C.A.R.M. said that it was the mayor who had asked him to get involved in the corruption. In his communication to the Committee, C.A.R.M. explained that the secretary was not speaking in his personal capacity but on behalf of the mayor.

4.9 As for the PRRA, the State party states, with reference to the psychological test, that the PRRA officer noted that C.A.R.M. and L.G.U. had not undergone treatment for post-traumatic stress disorder after the November 2003 evaluation. It was only when they were summoned in connection with their deportation from Canada that they again consulted the psychologist. The State party also points out that the psychological reports do not in any way support C.A.R.M.'s major contention that his return to Mexico would cause him irreparable harm.

4.10 Also in the context of the PRRA and the criminal complaint brought by C.A.R.M.'s half-brother, the State party observes that C.A.R.M. claimed that, on the advice of his attorney, his half-brother had not mentioned in his police statement that his attackers were to all appearances police officers and that they wanted to know where C.A.R.M. was. He ostensibly refused to send sworn testimony to C.A.R.M. confirming his allegations because he was afraid he would be placing himself in danger. According to C.A.R.M., the members of his family were not used to helping each other out, and his half-brother was angry with him. The State party observes that the PRRA officer noted that the half-brother had nevertheless taken the trouble to send a copy of the complaint to C.A.R.M. as well as a copy of his voter registration card.

4.11 With regard to the letter from the family friend informing the complainants that they were still being hunted, the State party says that the PRRA officer noted that the letter was dated subsequent to the time that the PRRA had been offered to the complainants, and that it did not form part of an ongoing correspondence relating similar incidents that had occurred since the complainants' departure from Mexico. The PRRA officer also felt that it was unreasonable to think that police officers would have waited three years before showing up if they were really looking for the complainants, and that the letter did not come from an independent source.

4.12 The State party says, with regard to the Internet article stating that the former director of the prison in San Pedro Cholula had fled after a warrant was issued for his arrest, that C.A.R.M. stated in his PRRA application that the individual in question was the same person who had warned him that the drug traffickers from the Gulf Cartel were in the prison. According to C.A.R.M.'s Personal Information Form, however, it was the mayor's secretary who told him about the presence of the drug traffickers. The PRRA officer also concluded that the article did not establish any link between the events discussed in the article and the complainants' allegations. It was not possible to conclude from the article that the complainants' life or security were in jeopardy in Mexico.

4.13 With regard to the documentation on the general situation in Mexico, the State party declares that the PRRA officer studied a number of the reports on the situation of human rights in Mexico and concluded, inter alia, that "corruption and abuse of the justice system are widespread". He noted, however, that the Mexican Government had had some success in combating corruption and that remedies existed for victims. The officer concluded that the complainants had not demonstrated the inability of the Mexican State to protect them, having used none of the remedies available to them.

4.14 The State party submits that the complaint is not even minimally founded. The State party recalls the Committee's general comment No. 1, which establishes that "it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication". The complaint submitted to the Committee for consideration is, first of all, manifestly devoid of any substance, given the clear lack of evidence to show that the complainants run any personal risk of being subjected to reprisals in Mexico. As the letter from the family friend cannot be considered to have come from an independent source, the complaint is based almost entirely on the allegations of C.A.R.M., whose credibility has been cast into serious doubt by the many discrepancies in his testimony. C.A.R.M. has failed to establish that, if a risk did exist, it would exist anywhere in Mexico. The State party believes that the complainants have not established that they would be personally at risk of torture anywhere in Mexican territory.

Complainant's comments on the State party's observations concerning the complaint

5.1 On 16 October 2006, the complainants submitted their comments on the State party's observations.

5.2 On the matter of exhaustion of domestic remedies, the complainants explain that they applied to the Federal Court for a suspension of their deportation during consideration of the application on humanitarian grounds and that their application was denied. The State party's argument is thus erroneous. The complainants applied for a suspension of their deportation. They also applied for refugee status and for judicial review of the negative decision by the Federal Court. They submitted an application under the PRRA procedure. They applied for permanent resident status on humanitarian grounds. They applied for an administrative suspension in order to halt their deportation and allow their case to be reviewed on humanitarian grounds. The complainants conclude that the complaint is admissible.

5.3 The complainants reiterate that the PRRA is not an effective and adequate remedy, and that the officers who conduct the procedure are insensitive to the suffering and risks of deportees in countries where they may be tortured. They refer to a document submitted by the American Association of Jurists, a non-governmental organization, to the Human Rights Committee during its consideration of the periodic report of Canada in October 2005, according to which the acceptance rate for persons under the PRRA is only 1.5 per cent for all of Canada.

5.4 As to the allegation that the complaint is not even minimally founded, the complainants maintain that they have submitted several pieces of evidence and refer to: the psychologist's reports on post-traumatic stress disorder; the various items submitted to the Canadian authorities on corruption, impunity and the lack of adequate protection in Mexico; the fact that C.A.R.M.'s half-brother was abducted and that his kidnappers asked him where the complainants were; and the letter from the family friend. Moreover, they do not contest the fact that C.A.R.M. installed computer equipment in the penal facility. The danger to the complainants is proved by the fact that C.A.R.M.'s half-brother was abducted by persons seeking the complainant. The PRRA officer could at least have given the complainants the benefit of the doubt.

5.5 The complainants conclude that they have exhausted domestic remedies and that there is not enough evidence to prove that their complaint is lacking in substance. Lastly, they state that they have demonstrated that they would be subjected to irreparable harm if they were returned to Mexico.

State party's observations on admissibility and the merits

6.1 In a note verbale dated 8 January 2007, the State party reiterates that the complaint is inadmissible because the complainants have not exhausted domestic remedies and have not established a prima facie case for the purpose of admissibility. With regard to the exhaustion of domestic remedies, the State party points out that the complainants attribute remarks to it that it has not made. It was never stated that the complainants had not submitted an application for suspension with the Federal Court of Canada. In its observations of 26 September 2006, the State party clearly indicated that the complainants, by submitting an application for leave and for judicial review, would also have had the option of applying for a suspension of their deportation if they were still in Canada at the time of the decision on humanitarian grounds. The State party points out that these remedies, while distinct, are not mutually exclusive.

6.2 The State party reports that on 22 December 2006 the application for permanent resident status on humanitarian grounds was rejected on the grounds that the complainants had not demonstrated that they would be personally targeted by the law enforcement authorities, the mayor of San Andrés Cholula or the Gulf Cartel drug traffickers upon their return to Mexico. The State party points out that the complainants could submit an application to the Federal Court of Canada for leave and for judicial review of this decision. They could also request the Federal Court to suspend their deportation pending the outcome of the judicial review.

6.3 The State party reiterates its earlier arguments and maintains that the communication is inadmissible on the grounds that domestic remedies have not been exhausted and that the complainants have not established a prima facie case for the purpose of admissibility.

Additional information and comments submitted by the complainants

7.1 On 24 January 2007, the complainants informed the Committee that their application for permanent resident status on humanitarian grounds had been rejected on 22 December 2006 and that they had submitted an application for judicial review with the Federal Court.
On 28 February 2007, they informed the Committee that their application for suspension of their deportation had been rejected by the Federal Court on 26 February 2007.

7.2 On 7 March 2007, the complainants submitted their comments on the State party's observations. They reiterate their arguments on the exhaustion of domestic remedies. They note that the application on humanitarian grounds had been rejected, as had the application for suspension. They reiterate that they have exhausted all available remedies. In the light of their situation, they have been forced to remain in Canada illegally.

7.3 As to the allegation that their complaint is not even minimally founded, they reject the State party's claim that the letter from the family friend does not come from an independent source. The State party is wrong to require that the letter be part of an ongoing correspondence. The conclusion of the PRRA in this regard serves to demonstrate yet again why this remedy is ineffective and inadequate, as well as the fact that the PRRA officer looked for any possible grounds for rejecting their application. The only response the PRRA officer could make to the claim that the complainants' rights would not be protected in Mexico was to say that there had been statements made by the Mexican Government indicating its intention to change the situation. The complainants further reiterate their observations regarding the existence of several pieces of evidence to support their allegations.

7.4 They refer also to a document on torture in Mexico issued in 2005 by the Miguel Agustín Pro Juárez Human Rights Centre, a non-governmental organization, in which that organization notes that, as the Mexican Government acknowledged in its report to the Committee against Torture, no one had been convicted of the crime of torture in Mexico between 1997 and 2003. They conclude that they have exhausted domestic remedies and that there is not enough evidence to prove that their complaint is not minimally founded, and they reiterate that they have demonstrated that they would suffer irreparable harm if they were returned to Mexico.

Issues and proceedings before the Committee

8.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under paragraph 5 (a) of that article, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

8.3 The Committee notes that the State party contests the admissibility of the complaint because domestic remedies have not been exhausted, given that the complainants did not submit an application to the Federal Court of Canada for leave and for judicial review of the decision of 3 March 2006 rejecting their PRRA application and that proceedings relating to their application for permanent resident status on humanitarian grounds have not yet been concluded. The State party observes that the complainants did not contest the decision rejecting their PRRA application despite the many allegations they made against it in their complaint to the Committee. The Committee also takes note of the complainants' allegations that the PRRA and judicial review by the Federal Court were not adequate or effective remedies, and of the information submitted on the numerous remedies that they did try.

8.4 With regard to the exhaustion of domestic remedies, the Committee notes that the complainants filed a request for asylum and that, following the rejection of that request, they filed an application for judicial review before the Federal Court. They also filed a PRRA application and an application for permanent resident status on humanitarian grounds, and filed for judicial review with the Federal Court following the negative decision in the latter procedure which, according to the most recent information received from their lawyer, is ongoing. In addition, on two occasions they applied for suspension of their deportation. The Committee also takes note of the fact that the complainants did not request permission to submit an application for judicial review of the negative decision concerning the PRRA application. However, the Committee notes that the complainants submitted their request for asylum on 12 November 2002 and that, more than four years later, their fate has still not been decided. In the circumstances, the Committee considers that the proceedings as a whole have not been concluded within a reasonable time and, consequently, that the communication is admissible under article 22, paragraph 5 (b), of the Convention.

8.5 The Committee must decide whether the complainants' return to Mexico would violate the obligation of the State party, under article 3 of the Convention against Torture, not to expel or return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.6 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture if they were returned to Mexico. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture in the country to which they would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. Other grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross, flagrant or mass violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.7 The Committee recalls its general comment on the implementation of article 3 of the Convention, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he or she to be returned to the country in question, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but the danger must be personal and present.

8.8 The Committee notes that the State party has pointed out many discrepancies in the main complainant's testimony to the various authorities that examined his allegations. It also notes the information provided by the complainants in this regard, in particular that some of the alleged contradictions were the result of misunderstandings of C.A.R.M.'s statements; that he had been nervous during his first interview and had not had sufficient time during his interviews to explain his case.

8.9 However, the Committee is of the view that the complainants have not provided satisfactory explanations on some of the points raised by the State party, in particular regarding the contradictions concerning the identity of their persecutors and the alleged discrepancies concerning the meeting at the town hall. The Committee notes that the complainants were never arrested, that they never lodged a complaint at the time of the alleged events or asked for protection from the Mexican authorities, and that they did not attempt to take refuge in another region of Mexico.

8.10 On the burden of proof, the Committee recalls its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.[c]

8.11 On the basis of all the information submitted, the Committee is of the view that the complainants have not provided sufficient evidence that would allow it to consider that they face a foreseeable, real and personal risk of being tortured if they are expelled to their country of origin.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainants to Mexico would not constitute a breach of article 3 of the Convention by the State party.

Notes

[a] Communication No. 273/2005, *T.A. v. Canada*, Views adopted on 15 May 2006.

[b] Communication No. 22/1995, *M.A. v. Canada*, Views adopted on 3 May 1995.

[c] See communications No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

Communication No. 300/2006

Submitted by:	Adel Tebourski (represented by counsel)
Alleged victim:	The complainant
State party:	France
Date of the complaint:	23 July 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2007,

Having concluded its consideration of complaint No. 300/2006, submitted on behalf of Mr. Adel Tebourski under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant, Adel Tebourski, a Tunisian national, was residing in France when the present complaint was submitted and was the subject of a deportation order to his country of origin. He claims that his forced repatriation to Tunisia constitutes a violation of article 3 of the Convention against Torture. The complainant is represented by counsel, Lucile Hugon, from Action by Christians for the Abolition of Torture (ACAT).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 27 July 2006. At the same time the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Tunisia while his complaint was being considered. The Committee reiterated this request in a note verbale dated 28 July 2006.

1.3 The Committee was informed by counsel that the complainant had been deported to Tunisia on 7 August 2006.

The facts as presented by the complainant

2.1 In 1985, the complainant left Tunisia for Belgium, where he pursued his studies. On 26 November 2001, he was arrested in northern France, following the assassination of Ahmed Shah Massoud on 9 September 2001 in Afghanistan. Massoud, the leader of the Northern Alliance forces in Afghanistan, was assassinated by Abdessatar Dahmane and Bouraoui El Ouaer (who also died in the attack). The trial of the complainant and his alleged accomplices began in March 2005 before the Paris Criminal Court. The complainant stood accused of having organized the departure of volunteers for Pakistan and Afghanistan. His role was confined to procuring false papers such as visas and passports. He denies any knowledge of the plans of his friend Abdessatar Dahmane, from whom he had heard nothing in the months leading up to Massoud's assassination.

2.2 On 17 May 2005, the Paris Criminal Court sentenced the complainant to six years' imprisonment for "criminal conspiracy in connection with a terrorist enterprise" and to deprivation of his civil, civic and family rights for a period of five years. He received a remission of sentence for good conduct. He held dual French-Tunisian nationality, which he had acquired in 2000 after marrying a French national in 1995. Pursuant to a decree of 19 July 2006, he was stripped of his French nationality, and he was served the same day with a ministerial deportation order, motivated by "the imperative requirements of State security and public safety". On 22 July 2006, he was released from Nantes prison and taken straight to the Mesnil-Amelot administrative detention centre.

2.3 On 25 July 2006, the complainant filed an application for asylum in France. This application was reviewed under the urgent procedure that allows the French Office for the Protection of Refugees and Stateless Persons (OFPRA) to take a decision within 96 hours. On 28 July 2006, OFPRA rejected the asylum application. On the same day, the complainant lodged an appeal against this decision with the Refugee Appeals Board. This appeal does not have suspensive effect.

2.4 In an appeal filed on 24 July 2006, the complainant asked the interim relief judge at the Paris Administrative Court to take interim measures pending a review of the legality of the ministerial deportation order. In a ruling dated 25 July 2006, this request was rejected. In an appeal lodged on 26 July 2006, the complainant requested annulment of the ministerial deportation order. In a ruling dated 4 August 2006, the interim relief judge rejected the request for a stay of execution of the decision. In an appeal lodged on 1 August 2006, the complainant requested annulment of the decision establishing Tunisia as the destination country. In a ruling dated 5 August 2006, the interim relief judge rejected the request for a stay of execution of the decision, and the complainant was finally deported to Tunisia on 7 August 2006.

2.5 On 17 October 2006, the Refugee Appeals Board turned down the complainant's appeal, having due regard to the nature and gravity of the acts committed which, in the Board's view, justify his exclusion from the status of refugee pursuant to article 1 (F) of the 1951 Geneva Convention. However, the Board noted that the complainant "could have had reason to fear that he would be retried for the same offences for which he had already been convicted and punished, should he return to his country" and "the fact that, after his deportation to Tunisia, he remained at liberty but had been placed under close police surveillance without being arrested must be regarded as evidence of a desire on the part of the Tunisian authorities to disguise their true intentions towards him, particularly in view of the attention which this case has attracted in the international media".

The complaint

3.1 The complainant alleges a violation of article 3 of the Convention. He cites the Tunisian Criminal Code, the Military Code of Pleadings and Penalties, and the anti-terrorist law of 10 December 2003, which prescribe penalties for activities carried out outside Tunisia. He argues that he will be convicted and imprisoned again for the acts for which he has already served a sentence in France.

3.2 The complainant argues that terrorism cases involving Tunisian nationals provoke a particularly strong reaction in Tunisia. Several individuals convicted under article 123 of the Code of Military Pleadings and Penalties or the anti-terrorist law of 10 December 2003 have been severely tortured after being deported by a third country to Tunisia. The complainant cites several examples of Tunisians who were allegedly subjected to torture or ill-treatment after arriving in Tunisia. He recalls that many persons accused of engaging in activities relating to terrorism are often tortured by the Tunisian authorities in order to extract confessions from them. He further recalls that conditions of detention in Tunisia are inhuman and degrading, without giving further details.

3.3 The complainant contends that the Tunisian authorities cannot be ignorant of his conviction in France, since it was the subject of numerous press articles. His family in Tunisia contacted two lawyers to try to ascertain whether proceedings had already been instituted in Tunisia against the complainant. The two lawyers were unable to obtain this information from the clerks of the courts concerned.

State party's observations on admissibility and the merits

4.1 On 18 October 2006, the State party submitted its observations on the admissibility and merits of the complaint. It argued that it is inadmissible, because the complainant did not appeal against the decisions taken by the interim relief judge (see paragraph 2.4 above). Likewise, the appeals on the substance of the case are still pending before the Paris Administrative Court and, consequently, the complainant has not exhausted all domestic remedies.

4.2 On the merits, the State party considers the complaints brought by the complainant to be manifestly unfounded. At no point did he provide material and irrefutable evidence of the threats that he would allegedly face upon return to Tunisia. In the first place, during the procedure prior to the decision to establish Tunisia as the country of destination, he evinced no specific arguments that would have led the French authorities to conclude that his personal security would not be assured in his country of origin. Secondly, he failed to provide solid evidence to OFPRA when it reviewed his request for asylum. In its decision of 28 July 2006, that body found that there was no evidence to suggest that the complainant would face personal persecution if he returned to a country to which he had in any case returned several times since 1985.

4.3 The State party invoked the decision handed down by the interim relief judge at the Paris Administrative Court on 29 July 2006, in which the judge found that, even if the acts for which the complainant had been convicted in France could, under a Tunisian law of 10 December 2003, be grounds for bringing proceedings against him, that circumstance alone could not be construed as constituting inhuman and degrading treatment, since the complainant did not risk being sentenced to death and there was no evidence that the conditions in which he might be detained amounted to inhuman or degrading treatment. The State party submits that the different French administrative and judicial authorities to which the complainant applied conducted a thorough and balanced review of his situation under conditions free from any form of arbitrariness, in accordance with the requirements of the Committee.[a]

4.4 The State party emphasizes that, insofar as the complainant was unable to show that the fears cited in the event of his return to Tunisia were well founded, there was no justification for deferring the removal from France of a person who had proved himself highly dangerous to public order. It recalls that the Paris Criminal Court, in its judgement of 17 May 2005, stressed that the complainant was highly dangerous because of his subversive activities. It was because of this manifest danger and the demonstrable absence of risks in the event of his return to Tunisia that the State party considered it necessary promptly to remove the complainant from the country, balancing the imperatives of State security with the guarantees afforded by the Convention.

4.5 The State party stresses that it intends to respond favourably to requests from the Committee against Torture for stays of execution, even though, under rule 108 of the rules of procedure, such requests are not legally binding on States parties. However, it does consider that where, as in the present case, requests appear to it to be manifestly unfounded, it has a responsibility, having ensured beyond reasonable doubt that the interested parties do not face an individual and proven risk of ill-treatment, to remove foreigners whose presence poses a grave threat to public order and national security.

Complainant's comments on the State party's observations

5.1 On 18 December 2006, the complainant recalled that the purpose of the appeal to the interim relief judge for the imposition of interim measures was to prevent his deportation to Tunisia. In such a case, a remedy that remains pending after the deportation is, by definition, pointless.[b] The same argument applies to remedies pending before the Paris Administrative Court. The very fact that the deportation was carried out demonstrates the ineffectiveness of these remedies, which cannot thenceforth be exhausted by the complainant.

5.2 Regarding the State party's contention that the complainant did not provide evidence of the threats that he would face if he returned to his country of origin, the complainant recalls that the Refugee Appeals Board recognized, in its decision of 17 October 2006, that he feared persecution. He further recalls that he provided the French courts with sufficient evidence to raise serious doubts as to the legality of the deportation decision.

5.3 Regarding the so-called "demonstrable absence of risks in the event of his return to Tunisia", the complainant stresses that he frequently has to call his counsel from a public telephone booth. Although he was not arrested upon or after his arrival in Tunisia, he is under constant surveillance (wiretapping and being followed). His personal belongings are still being withheld. He still has no Tunisian identity papers, in spite of his many attempts to procure some. He has learned from a friend of his brother who works for the police that an internal message was sent out to all Tunisian police stations and offices when he arrived in Tunisia, giving instructions that he should not be arrested under any pretext in the weeks that followed, probably because of the media attention surrounding the case.

Additional observations of the State party

6.1 On 1 February 2007, the State party submitted that the Refugee Appeals Board's decision of 17 October 2006 merely confirmed the decision taken by OFPRA on 28 July 2006, denying the complainant refugee status. The Board noted that "while he did not directly commit terrorist acts, Mr. Adel Tebourski knowingly participated in their organization". The State party furthermore informs the Committee that, pursuant to a ruling of 15 December 2006, the Paris Administrative Court dismissed on the merits the complainant's appeal for annulment of the decision by the Minister of the Interior establishing Tunisia as the destination country. In that ruling, the court noted that "the evidence in the case does not show that Mr. Tebourski, who has been living in Europe since the mid-1980s, is currently the subject of criminal proceedings brought by the Tunisian authorities".

6.2 In response to the complainant's allegation that the French authorities refused to deport him to a country other than Tunisia, the State party recalls that the complainant at no time designated a country that could take him and to which he could be legally admitted. In these circumstances, he could only be sent to his country of origin, given that his presence on French soil constituted a grave threat to public order and the safety and security of the State.

6.3 The State party informs the Committee that, while no provision of the Convention requires it to do so, it has nonetheless contacted the Tunisian authorities, through the diplomatic channel, in order to obtain information on the complainant's circumstances since his return to Tunisia. The Committee will be informed of the outcome of this initiative at the earliest opportunity.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee ascertained that the communication satisfies the conditions of admissibility set out in article 22, paragraphs 1, 2 and 5 (a), of the Convention, namely, that it concerns a State party which has made the declaration under article 22, and that, insofar as it alleges a breach of article 3 of the Convention against a named and identifiable individual, it is not anonymous, does not constitute an abuse of the right of submission to the Committee and is not incompatible with any provisions of the Convention.

7.2 The Committee also ascertained that the same matter, i.e. France's failure to comply with article 3 of the Convention by deporting to Tunisia a person who alleges that he risks being tortured, has not been and is not being examined under another investigation or settlement procedure.

7.3 Regarding domestic remedies, the Committee noted with interest the observations of the State party, which considers the complaint to be inadmissible, because the complainant failed to exhaust all domestic remedies (cf. paragraph 4.1 above). However, the Committee notes in this regard that, on 26 July 2006, the complainant lodged a non-suspensive appeal with the Paris Administrative Court for an annulment of the ministerial enforcement order. It also notes that, on 1 August 2006, the complainant appealed to the same court for annulment of the decision by the Minister of the Interior to establish Tunisia as the destination country. The complainant also asked the interim relief judge to impose interim protection measures, which the judge refused to do. On 15 December 2006, the Paris Administrative Court dismissed the two appeals for annulment. The complainant could doubtless have appealed this decision before the Paris Administrative Court. However, given that the expulsion order was executed on 7 August 2006, the Committee is entitled to find that a remedy which remains pending after the act which it was designed to avert has already taken place has, by definition, become pointless, since the irreparable harm can no longer be avoided, even if a subsequent judgement were to find in favour of the complainant.

7.4 In light of the foregoing, the Committee considers that it has grounds to conclude that, from the moment that the complainant was deported to Tunisia under the conditions in which that took place, it was very unlikely that the remaining remedies cited by the State party would have given him satisfaction. The Committee also notes that if the exercise of domestic remedies is to be effective and not illusory, an individual must be allowed a reasonable length of time before execution of the final decision to exhaust such remedies. The Committee notes that in the present case the complainant was stripped of his nationality by the State party on 19 July 2006, the consequence of which was to make him an immigrant in an irregular situation who was liable to expulsion. Despite the steps he took (cf. paragraphs 2.3 and 2.4 above), the complainant was expelled just three weeks after this decision. All remedies which remain open to the complainant following his expulsion are by definition pointless. The Committee therefore declares the complaint to be admissible.

Consideration of the merits

8.1 The Committee must determine whether, in deporting the complainant to Tunisia, the State party violated its obligation under article 3 of the Convention not to expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee stresses that it must take a decision on the question in the light of the information which the authorities of the State party had or should have had in their possession *at the time* of the expulsion. Subsequent events are useful only for assessing the information which the State party actually had or could have deduced at the time of expulsion.[c]

8.2 To justify its refusal to comply with the Committee's decision requesting it not to deport the complainant to Tunisia while his case was being considered by the Committee, the State party puts forward four arguments:

- The danger which the complainant posed to the domestic public order;
- The absence of a risk that the individual concerned would be tortured if returned to Tunisia;
- The fact that the individual concerned, while opposing his deportation to Tunisia, did not suggest another host country;
- The non-legally binding character for States parties of protection measures decided by the Committee pursuant to rule 108 of the rules of procedure.

In this regard, the Committee affirms that the purpose of the Convention in article 3 is to prevent a person from being exposed to the *risk* of torture through refoulement, expulsion or extradition "to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", regardless of the character of the person, in particular the danger he poses to society.

8.3 In other words, article 3 of the Convention offers absolute protection to anyone in the territory of a State party which has made the declaration under article 22. Once this person alludes to a risk of torture under the conditions laid down in article 3, the State party can no longer cite domestic concerns as grounds for failing in its obligation under the Convention to guarantee protection to anyone in its jurisdiction who fears that he is in serious danger of being tortured if he is returned to another country.

8.4 In the present case, the matter having been brought to the Committee's attention after the alleged or real exhaustion of domestic remedies, even if the Committee takes into consideration all the comments which the State party has submitted on this communication, the declaration made by the State party under article 22 confers on the Committee alone the power to assess whether the danger invoked is serious or not. The Committee takes into account the State party's assessment of the facts and evidence, but it is the Committee that must ultimately decide whether there is a risk of torture.

8.5 By establishing Tunisia as the destination for the complainant, in spite of the latter's explicit request not to be returned to his country of origin, the State party failed to take account of the universally accepted practice in such cases, whereby an alternative solution is sought with the agreement of the individual concerned and the assistance of the Office of the United Nations High Commissioner for Refugees and a third country willing to receive the individual who fears for his safety.

8.6 The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would offer asylum-seekers claiming a serious risk of torture purely relative, not to say theoretical, protection.

8.7 The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which it did and for the reasons adduced, thereby presenting the Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Tunisia was a violation of articles 3 and 22 of the Convention.

10. In conformity with article 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views, to make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country (also a State party to the Convention) to which he was deported, the complainant's current whereabouts and the state of his well-being.

Notes

[a] See communication No. 219/2003, *G.K. v. Switzerland*, Views adopted on 7 May 2003, para. 6.12.

[b] See communication No. 195/2002, *Brada v. France*, Views adopted on 17 May 2005, para. 7.8.

[c] See communication No. 233/2003, *Agiza v. Sweden*, Views adopted on 20 May 2005, para. 13.2.

B. Decisions on admissibility

Communication No. 284/2006

Submitted by:	R.S.A.N. (represented by counsel)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	12 December 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 November 2006,

Having concluded its consideration of complaint No. 284/2006, submitted to the Committee against Torture by R.S.A.N. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is R.S.A.N., a national of Cameroon born in 1969, currently residing in Canada and awaiting deportation to his country of origin. He claims that his forcible return to Cameroon would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 The Committee transmitted the complaint to the State party on 13 January 2006, without requesting interim measures of protection.

The facts as submitted by the complainant

2.1 In August 1995, the complainant, then a student at the University of Yaoundé, participated in a strike organized by a student assembly opposed to President Paul Biya. During a peaceful student march, he was forced into a police car, handcuffed, beaten and taken to a police station. He was accused of being one of the leaders of the student assembly and arrested together with 50 other students, with whom he had to share a cell designed for no more than 10 persons. One after the other, they were interrogated by police, forced to sing and dance and beaten with a stick. Those who resisted were subjected to more severe torture. The complainant was thrown on the ground and dragged by his feet for at least 5 metres, as a result of which he has a scar on his back measuring 7 cm in length and 3 cm in width. After 24 hours of torture and humiliation, he was released and warned never to take part in a student demonstration again. Following the strike, some student leaders were arrested and sentenced to heavy prison terms. One student was allegedly burned alive in his dormitory in order to bring false charges against members of the student assembly; several others were shot to death during demonstrations. The Government also adopted a decree prohibiting the recruitment of participants in the strike to the public service or to any of the country's large public and private companies.

2.2 In October 1995, the complainant left Cameroon for Côte d'Ivoire where he continued his studies and obtained a master's degree in psychology from the University of Abidjan. In July 1997, together with three fellow students, he founded and became secretary-general of an NGO to assist women and child victims of sexual violence (SOS Violences Sexuelles). He organized press conferences and continued to protest against the Government of Cameroon, e.g. by participating in a sit-in on the premises of the Cameroonian Embassy in Abidjan on 11 October 1997, the day before the presidential elections in Cameroon. He also gave radio and television interviews and wrote a number of newspaper articles on the human rights situation in Cameroon. After his NGO had uncovered a paedophile ring in Côte d'Ivoire in which a minister and an ambassador were involved, the premises of the organization were devastated and the complainant received anonymous death threats.

2.3 On 9 June 2000, the complainant entered Canada on a visitor's visa to participate in a human rights conference from 11 to 30 July. During his stay in Canada, the political situation in Côte d'Ivoire deteriorated following a failed coup d'état. After a colleague from SOS Violences Sexuelles had warned the complainant that he would not be safe in Côte d'Ivoire, he applied for refugee status in Canada on 12 July 2000. On 20 July 2001, the Canadian Immigration and Refugee Board rejected his application, based on the following contradictions in his counts: (a) his contention that the President of the University of Yaoundé had removed the names of all participants in the August 1995 strike from the student register and the fact that he was nevertheless able to submit grade reports dated October 1995 to the Board as evidence; (b) inconsistencies between the complainant's chronology of events and official records according to which the student strike took place in August 1996 rather than in August 1995; (c) his inability to produce any newspaper articles or other evidence that would confirm his participation in the alleged events of 1995; and (d) the fact that official documents suggest that the punishment of strike participants was not as severe as claimed by the complainant.

2.4 The complainant did not apply for leave to appeal the decision of the Immigration and Refugee Board to the Federal Court, but followed the advice of his lawyer to file an application in the Post-Determination Refugee Claimants class instead. On 8 December 2004, his application was transformed into a Pre-Removal Risk Assessment (PRRA) application under the new Immigration Law. On 13 October 2005, Citizenship and Immigration Canada rejected his PRRA application, in the absence of sufficient grounds to believe that he would be exposed to a personal risk of torture in Cameroon. The PRRA officer based her decision, inter alia, on the following grounds: (a) the fact that the complainant had manipulated a date and pasted his name into a copy of the report of the United Nations Commission on Human Rights Special Rapporteur on the question of torture on his visit to Cameroon (E/CN.4/1999/61), which he submitted as evidence; (b) his failure to raise his torture claim before the Immigration and Refugee Board and the late submission of that claim on 7 January 2005; and (c) his low political and journalistic profile. The complainant did not appeal the PRRA decision to the Federal Court, as he was advised by his lawyer that 99 per cent of such appeals were unsuccessful.

2.5 In the meantime, the complainant established a common-law relationship with a woman from Cameroon with permanent residence in Canada with whom he has been living since March 2004. A son was born out of their relationship on 20 December 2004.

2.6 On 9 November 2005, the complainant was informed that his removal from Canada had been scheduled for 6 December 2005 and that an arrest warrant would be issued against him, if he failed to present himself to the immigration authorities at Montreal International Airport. Subsequently, he filed an application for permanent residence based on his common-law relationship with a Canadian resident. On 21 November 2005, the complainant unsuccessfully requested the suspension of his deportation order, as well as priority consideration of his application for permanent residence. On 28 November 2005, the mother of his child filed an application to sponsor him as a common-law partner in the family class; the application was subsequently suspended at the mother's request.

2.7 The complainant was allegedly unable to comply with the removal order on 6 December 2005 as he fell ill and had to go to hospital. An arrest warrant was subsequently issued against him. No further date has been set for his deportation but the police came looking for the complainant at his partner's apartment.

The complaint

3.1 The complainant claims that his forcible return to Cameroon would expose him to a risk of torture, in violation of article 3 of the Convention, by reason of his activities as a student leader, his participation in conferences, and his critical radio interviews and newspaper articles that he published in Côte d'Ivoire and in Canada, on the human rights situation in Cameroon. He submits that he was tortured at the hands of the Cameroonian police during his detention in 1995, as a result of which he still displays physical and psychological *sequelae.*

3.2 The complainant claims that the evidence submitted by him shows that several other human rights activists were arrested and tortured, or had disappeared, upon return to Cameroon. As a political opponent who applied for political asylum in Canada and continued to criticize the Cameroonian regime, he would be accused of defamation of the Cameroonian Government and tortured by government agents who would enjoy full impunity.

3.3 For the complainant, the human rights situation in Cameroon has further deteriorated during the past 10 years. Student opposition leaders and human rights activists continue to be intimidated and persecuted. Certain provinces, including the complainant's native Eastern province, were considered rebel provinces and any person from that region facing charges was likely to be presumed guilty merely on the basis of ethnic affiliation to the predominantly Bamiléké population of that province.

3.4 In support of his claims, the complainant submits, inter alia, the following evidence:

(a) A medical report dated 23 November 2005 issued by a Montreal health centre confirming that the complainant has a scar on his back measuring 3 by 7 cm;

(b) A psychological report dated 28 November 2005 from a social worker of the Jewish Board of Family and Children's Services in New York, United States of America, based on a telephone conversation with the complainant, confirming that he has symptoms of PTSD, i.e. nightmares, exaggerated startle response, memory impairment, emotional numbness, re-experiencing details of torture, flashbacks and intrusive symptoms;

(c) A letter from a pastor of Cameroonian origin working at the Eglise Evangélique de Pentecôte in Montreal who had known the complainant in Côte d'Ivoire in her capacity as secretary-general of an African women's rights NGO and which confirms the complainant's political activities in Cameroon and Côte d'Ivoire, concluding that he would run a risk of being detained and tortured or even killed if he were to be deported to Cameroon;

(d) A letter dated 21 November 2005 from the secretary-general of SOS Violences Sexuelles, stating that the complainant was a student opposition leader in Cameroon in the early 1990s and that he was repeatedly threatened by the authorities in Côte d'Ivoire after he had uncovered the paedophile ring;

(e) Letters in support of the complainant's request to suspend his deportation order from the Canadian Committee to Aid Refugees, the Ligue des Droits et Libertées and the Scalabrini Centre for Migrants and Refugees;

(f) Several newspaper articles by the complainant, two of which briefly criticize the political situation in Cameroon, as well as articles about his work as secretary-general of SOS Violences Sexuelles;

(g) A number of articles about the fate of political opponents who were returned to Cameroon, some of whom have allegedly disappeared;

(h) Reports published in 2005 by Amnesty International, the International Federation of Human Rights Leagues (FIDH) and the United States Department of State stating that torture in police custody and prisons is widespread and rarely punished in Cameroon.

3.5 The complainant claims to have exhausted domestic remedies, as no further remedies are available to him. His failure to lodge an appeal against the rejection of his application for refugee protection and against the rejection of his PRRA application was due to the inadequate advice from his lawyer. He argues that, in any event, he would have been unable to pay the legal fees for lodging appeals against those decisions and that the PRRA procedure cannot be considered an effective remedy for asylum-seekers, given that 98.5 per cent of all applications are rejected. The complainant submits that the State party failed to give effect to a new section of the Immigration and Refugee Protection Act which had been adopted by Parliament and provided for more effective appeals against decisions on applications for refugee protection.

3.6 The complainant submits a report of the American Association of Jurists dated October 2005, which confirms that only 1.5 per cent of PRRA applications are accepted. It describes the PRRA procedure as an administrative and summary decision on deportation and criticizes the lack of independence of PRRA officers. Leave to appeal decisions on refugee applications to the Federal Court was granted in only 10 to 12 per cent of all cases. Moreover, rather than conducting a full review on the merits, the court limited its judicial review to a control of the reasonableness of decisions to expel an individual, which had been criticized by the Committee against Torture in its concluding observations on the fourth and fifth periodic report of Canada.

State party's observations on the admissibility and on the merits

4.1 On 25 July 2006, the State party submitted its observations on the admissibility and, subsidiarily, on the merits of the complaint, arguing that the complainant has failed to exhaust all available domestic remedies, as he did not appeal the decisions of the Immigration and Refugee Board or of the PRRA officer, and that in any event, his claim under article 3 of the Convention is without merit and fails even to rise to the minimum level of substantiation required for purposes of admissibility.

4.2 The State party submits that the complainant could have requested leave to apply for judicial review of the decision of the Immigration and Refugee Board, which would have been granted by the Federal Court upon showing "a fairly arguable case". The burden of proof was on him to show that his failure to avail himself of this remedy was due to the inadequate advice from his lawyer. The Court's judicial review covers jurisdictional matters, breaches of principles of natural justice, errors in law, erroneous findings of fact made in a perverse or capricious manner, or any other breach of the law by the authorities. The decision of the Federal Court can be appealed to the Court of Appeal if the judge finds that the case involves a serious question of general importance. If leave is granted, the decision of the Court of Appeal can be appealed to the Supreme Court of Canada.

4.3 The State party argues that the Committee has recognized the effectiveness of the system of judicial review in its recent jurisprudence,[a] and has consistently held that this remedy must be exhausted by complainants.[b] Similarly, it has recently acknowledged that applications for leave and judicial review of PRRA decisions "are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case".[c] For the State party, the PRRA procedure further enhances the protection afforded by the former Post-Determination Refugee Claimants procedure which had been considered effective by the Human Rights Committee.[d]

4.4 The State party disagrees with the Committee's decision in *Falcon Rios v. Canada*,[e] arguing that PRRA officers are impartial and specifically trained to assess the risk of rejected applicants on the basis of international law, including the Convention against Torture and the International Covenant on Civil and Political Rights. The low acceptance rate in the PRRA procedure was due to the fact that most PRRA applicants were individuals whose application for refugee status had already been rejected by the Immigration and Refugee Board, which had accepted a total of 40 per cent of refugee applications in 2004/2005. The aim of the PRRA procedure was to evaluate any new risk elements at the time of deportation that did not exist at the time of the hearing before the Immigration and Refugee Board. The PRRA procedure was not a discretionary procedure but one that was governed by statutory criteria.

4.5 The State party submits that the complainant could have applied for judicial review of the PRRA decision and, at the same time, a stay of his deportation order pending the outcome of his appeal. The fact that his lawyer advised him not to do so and instead to file an application for permanent residence based on his common-law relationship with the mother of his child showed that the complainant had freely chosen not to avail himself of this remedy. However, this did not exempt him from the requirement to exhaust domestic remedies, in accordance with article 22, paragraph 5 (b), of the Convention.

4.6 According to the State party, the complainant can still apply for permanent residence on humanitarian grounds, a remedy for applicants who would face unreasonable hardship if they were to apply for Canadian permanent residence in their country of origin. The fact that a favourable outcome of this procedure had caused the Committee to discontinue a number of cases in the past showed the effectiveness of this remedy.

4.7 While acknowledging that the general human rights situation in Cameroon is critical, the State party submits that the complainant did not adduce sufficient elements to believe that he would be exposed to a personal risk of being subjected to torture upon return to Cameroon. The credibility of his claim to have been detained for 24 hours and tortured in 1995 was undermined by a number of contradictions identified by the Immigration and Refugee Board, an independent tribunal, and by the PRRA officer. Due weight should be accorded to the findings of these organs, unless it can be demonstrated that such findings are arbitrary or unreasonable.

4.8 The State party submits that the complainant's medical report merely confirms the existence of a scar on his back without specifying the cause of this injury. Even assuming that he was tortured in 1995, this would not constitute sufficient grounds to believe that he would still be at risk to be subjected to torture in Cameroon in 2006. The State party concludes that his claim under article 3 of the Convention is inadmissible under article 22, paragraph 5 (b), fails to meet the minimum level of substantiation required for purposes of admissibility, and is without merit in any event.

Complainant's comments on the State party's observations

5.1 On 23 September 2006, the complainant commented on the State party's submission, reiterating that the PRRA procedure, including judicial review thereof, does not constitute an effective remedy for refused refugee applicants and that his failure to apply for judicial review of the decision of the Immigration and Refugee Board, which he considers an effective remedy albeit limited in scope, was to be attributed to the inadequate advice that he had received from his lawyer.

5.2 The complainant argues that an application for permanent residence on humanitarian grounds is a purely discretionary remedy but admits that it had led to favourable results in a number of cases. However, all elements for a humanitarian solution were before the Minister of Immigration and Refugees whose decision on the complainant's application for family sponsorship was still pending after more than nine months, although such decisions were normally taken after six to eight months.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention as the complainant failed to apply for judicial review of the decisions taken by the Immigration and Refugee Board and by the PRRA officer, or for permanent residence based on humanitarian grounds. It also notes the complainant's arguments as to the ineffectiveness and the discretionary nature of the PRRA and humanitarian procedures. However, the Committee need not pronounce itself on the effectiveness of these remedies if it can be ascertained that the complainant could have availed himself of the possibility of applying for judicial review of the rejection of his application for refugee protection by the Immigration and Refugee Board.

6.4 The Committee recalls that the complainant does not generally contest the effectiveness of judicial review of decisions on applications for refugee protection, despite the limited scope of such review. However, he claims that he was precluded from availing himself of this remedy because of his difficult financial situation and because of the advice from his lawyer not to apply for judicial review of the decision of the Immigration and Refugee Board. In this regard, the Committee notes that the complainant has not provided any information on the costs of legal representation or court fees, nor on the possibilities or any efforts on his part to obtain legal aid for the purpose of initiating proceedings before the Federal Court. It also observes that alleged errors made by a privately retained lawyer cannot normally be attributed to the State party. The Committee concludes that the complainant has not adduced sufficient elements which would justify his failure to avail himself of the possibility to apply for judicial review of the decision of the Immigration and Refugee Board.

6.5 The Committee is therefore of the view that domestic remedies have not been exhausted, in accordance with article 22, paragraph 5 (b), of the Convention.

7. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors of the communication and to the State party.

Notes

[a] See, e.g., communication No. 183/2001, *B.S.S. v. Canada*, at para. 11.6.

[b] Communications Nos. 22/1995, 42/1996, 66/1997, 86/1997 and 95/1997.

[c] Communication No. 273/2005, *Aung v. Canada*, at para. 6.3.

[d] Human Rights Committee, communication No. 603/1994, *Badu v. Canada*, at para. 6.2; communication No. 604/1994, *Nartey v. Canada*, at para. 6.2; communication No. 654/1995, *Adu v. Canada*, at para. 6.2.

[e] Communication No. 133/1999 (2004), at para. 7.5.

Communication No. 288/2006

Submitted by:	H.S.T. (represented by counsel)
Alleged victim:	The complainant
State party:	Norway
Date of complaint:	9 January 2006 (initial submission)

Date of the present decision: 16 November 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2006,

Having concluded its consideration of complaint No. 288/2006, submitted to the Committee against Torture by H.S.T. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is H.S.T., a Mauritanian national, who was denied asylum in Norway and issued with a departure order on 14 April 2004. His whereabouts are currently unknown (see para. 5.2 below). He claims that, if he is returned to Mauritania,[a] he will be subjected to torture, cruel, and inhuman and degrading treatment, which will constitute a violation by Norway of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The application was initially submitted by the complainant himself, but his lawyer provided comments on the State party's submission on the complainant's behalf.[b]

1.2 On 3 February 2006, the Special Rapporteur on New Communications rejected the complainant's request for interim measures of protection.

The facts as presented by the author

2.1 The complainant claims to be a member of the prohibited movement Force de Libération des Africains de Mauritanie (FLAM). This militant organization transmitted information to members in exile to alert international human rights organizations and the international press about human rights violations in Mauritania. His role in the organization was "to recruit and sensitize younger members".

2.2 In Mauritania, the complainant was arrested three times. In 1995, after a student demonstration against "Arabization", he was detained for three days but was not interrogated. In 1996, he was arrested and detained for 14 days in relation to his father's opposition to agricultural reform. From 1996 to 2001, he studied and graduated in engineering in Jordan. Upon his return to Mauritania, he was again arrested in June 2001. He was interrogated and allegedly tortured so as to make him explain his role in the FLAM, and to reveal his brother's whereabouts (his brother obtained asylum in Sweden on the basis of his role as secretary-general of FLAM). He was released after two days. In December 2001, he learned that he was wanted by the police and left the country for Norway. In February 2002, he arrived in Norway and applied for asylum on 21 February 2002.

2.3 On 21 February 2003, the complainant's application was denied by the Directorate of Immigration (UDI). On 31 March 2004, his appeal to the Immigration Appeals Board (UNE) was rejected. On 14 April 2004, he was issued a departure order. He initiated judicial proceedings and requested an injunction to stay the order to leave the country until his asylum case had been reviewed by the courts. On 13 September 2005, the Court of First Instance (Oslo byfogdembete) rejected his request. On 8 December 2005, the Court of Appeal (Borgarting lagmannsrett) rejected his appeal. As the complainant did not obtain an injunction to stay the order to leave the country, he did not institute principal court proceedings. In addition, he states that he cannot afford such proceedings.

The complaint

3.1 The complainant claims that he fears inhuman and degrading treatment if returned to Mauritania, as he would be arrested and tortured or even killed, because of his political activism and his father's and brother's political activities.

3.2 He claims that he was ordered to leave Norway before his case was heard by the courts, and that the Norwegian court system does not provide for effective remedies. He adds that proceedings have been unreasonably prolonged, and that this is solely the Government's fault, which gave as justification its lack of knowledge about Mauritania.

The State party's observations on admissibility

4.1 On 3 April 2006, the State party provided its submission on admissibility only. It explains that, generally, applications for asylum are assessed and decided in the first, administrative, instance by the Directorate of Immigration (UDI). Administrative appeals are decided by the Norwegian Immigration Appeals Board (UNE). All asylum-seekers are appointed attorneys by the State. The legality of an administrative act may be challenged in Norwegian courts. Thus, asylum-seekers who find their applications for political asylum turned down by the administration have the possibility of filing an application before the Norwegian courts for judicial review and thereby have the legality of the rejection examined. Such an application is not subject to leave by the courts; neither is an application for injunction.

4.2 A concerned party may apply to the courts for an injunction, requesting an order to the administration to defer the deportation of the asylum-seeker. According to the Enforcement of Judgements Act 1992, an order for injunction may be granted if the plaintiff (a) demonstrates that the challenged decision probably will be annulled by the court when the main case is to be adjudicated, and (b) shows sufficient reasons for requesting an injunction, i.e. that an injunction is necessary to avoid serious damage or harm if the expulsion were enforced without the court having had the opportunity to adjudicate in the main case. Where the contested decision is a denial of asylum status, the second requirement in practice merges with the first requirement, which means that in an asylum case an application for injunction depends on whether or not the plaintiff can demonstrate that the challenged decision probably will be annulled by the court in the subsequent main case. In reviewing the legality of administrative asylum decisions the courts have full jurisdiction. The judicial review covers all factual and procedural aspects, as well as interpretation and application of the law.

4.3 On the facts, the State party submits that on 21 February 2003, UDI rejected the complainant's asylum application, as there were insufficient grounds to demonstrate that he would be persecuted upon return. On 16 March 2004, UNE rejected the complainant's appeal after oral hearings, during which the complainant made extensive statements, and after examining all the documents provided by the complainant, including his brother's statement and that of Ms. Garba Diallo, professor at the International People's College (IPC), Elsinore, Denmark. According to UNE, FLAM was established in March 1983 and was forbidden the following year. During recent years it has mainly operated in exile, from its headquarters in Senegal. There are no reports indicating that FLAM has either a prominent role in Mauritania or any political power. Neither are there any indications about persecution of ordinary FLAM members. UNE was familiar with the fact that the political opposition in Mauritania faces problems with the authorities, but there are no reliable reports subsequent to 2002 indicating arrests of political opponents, except for the arrest of one of the leaders of an organization who was working against slavery and was released after two days.

4.4 UNE highlighted the information provided by the complainant that was vague and inaccurate, regarding both his connection with FLAM and his relations with the Mauritanian authorities. He had explained that he was wanted by the authorities mainly because he was suspected of being a member of FLAM and because his brother was also a member, but provided no further information. Thus, he was not found to have met the necessary conditions under article 1 (A) of the United Nations Convention relating to the Status of Refugees to be granted asylum pursuant to section 16 of the Norwegian Immigration Act. Neither did he meet the conditions of the non-refoulement clause of section 15 of the Immigration Act, which provides the same protection as article 3 of the ECHR and article 3 of the Convention. Following the decision of UNE the complainant presented a "request for renewed assessment". UNE saw no reason to reverse its former decision. In the State party's view the complainant's case was assessed thoroughly, by both UDI and UNE.

4.5 On 16 June 2005, the complainant requested a temporary injunction pursuant to chapter 15 of the Norwegian Enforcement Act, to suspend the implementation of the administrative decision to deny asylum or residence permit on humanitarian grounds until the hearing of his main case before the courts. He has not to date brought a main case before the Norwegian courts. On 13 September 2005, the Court of First Instance (Oslo byfogdembete) denied the injunction request. The decision was made after a full day of oral hearings with extensive statements from the complainant, as well as examination of five other witnesses, including the complainant's brother. The Government called as an expert witness the regional adviser from Landinfo (Country of Origin Information Center), who has personal and up-to-date knowledge of the human rights situation in Mauritania. It also called the executive officer from UNE responsible for the complainant's case, who testified about how the case was assessed and decided by the immigration authorities.

4.6 The complainant appealed his request for an injunction to the Court of Appeal (Borgarting lagmannsrett), which confirmed the first instance decision on 8 December 2005. It concluded that after reviewing the facts of the case that the complainant would not face a personal risk of persecution if he were to be returned to Mauritania. The complainant did not contest this decision by appealing to the Appeal Committee of the Supreme Court. The complainant was represented by counsel throughout the court proceedings.

4.7 The State party submits that the complaint is inadmissible as manifestly unfounded. In its view there is no substantial risk that the complainant would be persecuted if returned to Mauritania. The mere allegation of membership of FLAM, and the vague allegations that he was tortured during his arrests in 1996 and 2001, do not amount to an arguable claim under the Convention. The complainant has failed to provide any detailed information of the alleged incidents or any medical evidence which supports his claim. According to reliable sources, there is no reason to assume that an ordinary member of FLAM would risk persecution contrary to the Convention upon return.

The complainant's comments on the State party's observations

5.1 On 3 July 2006, the complainant commented that the State party has no means of receiving information on the human rights situation in Mauritania directly and that it only relies on outside sources for such information. He submits that the Norwegian courts have only overruled administrative decisions regarding asylum applications on a few occasions, and that this raises a concern about the effectiveness of judicial remedies in the State party. That the courts decided against his application, despite the evidence of an expert with direct experience on the human rights situation in Mauritania, shows the Norwegian court system's failure to provide for an effective remedy. As a consequence of the State party's limited knowledge of the situation in Mauritania, and given that the complainant's brother was awarded refugee status in Sweden, following a fact-finding mission conducted by Sweden, the complainant requests the Committee to gather its own information regarding the factual basis of the complaint, under article 20 of the Convention.

5.2 On 6 July 2006, counsel advised the secretariat that to her knowledge the complainant is not currently in Norway. She states that he may have been in France a while ago and it is possible that he is in France now. The complainant had called the secretariat in March 2006, to enquire about the status of his case, and mentioned that he was then in Belgium.

Issues and proceedings before the Committee

Consideration of the admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention and its rules of procedure.

6.2 Pursuant to article 22, paragraph 1, of the Convention, the Committee may consider a communication from an individual who claims to be a victim of a State party's violation of a provision of the Convention, providing the individual is subject to that State's jurisdiction and the State has declared that it recognizes the Committee's competence under article 22.

6.3 The Committee notes that the complainant appears to have left Norway. Article 3 of the Convention prohibits return (refoulement) of a person by a State party to another State where there are substantial grounds for believing that the individual may be subjected to torture. In the present case, as the complainant appears to be no longer within any territory under the State party's jurisdiction, he cannot be returned to Mauritania by the State party. Consequently, article 3 of the Convention does not apply. Consideration of the complaint having become moot, the Committee finds it inadmissible. In light of the aforementioned grounds of inadmissibility, the Committee does not need to address the State party's contention that the complainant's claim under article 3 should be declared inadmissible as manifestly unfounded.

6.4 Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the complaint is manifestly unfounded, and thus inadmissible.

7. The Committee against Torture therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the complainant's counsel and to the State party.

Notes

[a] Mauritania became a State party to the Convention against Torture on 17 November 2004 but did not make a declaration under article 22.

[b] On 29 January 2006, the complainant sent an e-mail to the secretariat, stating that he was in hiding and requesting that his e-mail or the address of his lawyer be used for communication with him.

Communication No. 305/2006

Submitted by:	A.R.A.
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	25 September 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2007,

Having concluded its consideration of complaint No. 305/2006, submitted to the Committee against Torture by A.R.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is A.R.A., a citizen of Sri Lanka born on 6 December 1965, awaiting deportation from Sweden to Sri Lanka. Although he does not invoke a specific article of the Convention, his claims appear to raise issues under article 3 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The author is not represented by counsel.

1.2 On 18 October 2006, the Special Rapporteur on New Communications and Interim Measures decided not to issue a request for interim measures of protection.[a]

Factual background

2.1 While in Sri Lanka, the complainant used to help his father, who was a member of the Sri Lanka Freedom Party (SLFP), with his political activities, and later himself became an important member of that party. While serving in the military from August 1988 to April 1994, the complainant was physically and psychologically tortured by members of the United National Party (UNP), because of his political involvement. However, he confirms that this was not the reason he left the country.[b]

2.2 From 1994 to 2001, while the SLFP was in power, the complainant did not encounter any difficulties. However, since 1994, he was categorized as a "most wanted person" by the Liberation Tigers of Tamil Eelam (LTTE), who he claims want to kill him, because of knowledge he acquired in the army about this organization. From December 2001, when UNP came back to power, the complainant was threatened and his house was vandalized and burned down by three members of that party. His wife was told that they would kill him. She filed a complaint against the individuals who threatened her husband and they were charged. The complainant was called to give evidence but having received further threats decided not to give evidence and the charges were dropped. The complainant went into hiding and on 2 July 2003 he left the country. He claims that members of UNP have continued to threaten his wife and children since his departure.

2.3 On 14 September 2004, the Migration Board denied his request for asylum on the basis that Sri Lanka is a democratic State with a well-functioning court system. On 30 December 2005, the Aliens Appeal Board rejected his appeal, recalling the ceasefire of 2002, and indicating that it did not believe that the complainant was at risk of being persecuted by the LTTE. On 31 May 2006, the Migration Board rejected a request for reconsideration.

2.4 In or around 1 June 2006, upon hearing that his application had been rejected, the complainant attempted suicide, but survived. He was transferred from the emergency section of the hospital to the psychiatric section, where, on 3 June, he made three further attempts to terminate his life. His lawyer requested reconsideration of the case and a stay of the deportation order. On 19 June 2006, the Migration Board did not consider that there were new circumstances in the case and rejected the application for reconsideration.

2.5 On 18 August 2006, the Stockholm Civil Court ruled on the complainant's appeal of the decision of 19 June 2006 and did not consider how the situation in Sri Lanka and the new circumstances invoked by the author demonstrated that he was at a personal risk of persecution in Sri Lanka. The State party does not appear to contest the credibility of the complainant but does not believe that the circumstances put him at risk in the event of deportation.

The complaint

3. The complainant claims that he faces a real risk of being killed by either the LTTE or the UNP if he is returned to Sri Lanka. In addition, because of his contacts with the LTTE while he was in the army, he may be suspected by the authorities of having links with that organization, as a result of which he risks imprisonment or disappearance.

State party's observations on admissibility and the author's comments thereon

4.1 On 9 November 2006, the State party contested the admissibility of the complaint. It submits that the complaint is inadmissible under article 22, paragraph 5 (a), of the Convention, as the same complaint is currently before the European Court of Human Rights (ECHR). The application (8594/04) was lodged before the ECHR on 24 February 2004, even though domestic remedies were not exhausted until 31 May 2006. On 9 August 2006, the State party was notified of the application in accordance with rule 40 of the Rules of the Court (Urgent Notification of an Application). At the same time, the State party was requested to reply to a question posed by the Court. On 20 October 2006, the State party submitted a written statement, in accordance with the Court's request.[c] The State party notes that the ECHR did not request interim measures of protection regarding the expulsion order. The State party submits that as an application was pending before the ECHR when the present complaint was submitted to the Committee, the current complaint is inadmissible.[d]

4.2 In the event that the Committee does not find the complaint inadmissible for the above-mentioned reason, the State party submits that the communication should be considered inadmissible for being manifestly ill-founded, under article 22, paragraph 2, of the Convention and 107 (a) of the Committee's rules of procedure and requests the opportunity to elaborate in this argument at a later date.

5. On 30 November 2007, the author responded to the State party's submission, inter alia, reiterating his previous claims. He confirmed the State party's information on his application to the ECHR but stated that his legal representative took this initiative while he (the complainant) was in hospital and that after several years the case has still not been considered by the Court.[e]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. It recalls that it shall not consider any communications from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the *same matter has not been, and is not being, examined* under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that the European Court of Human Rights constitutes an examination by such a procedure.

6.2 The Committee considers that a communication has been, and is being examined by another procedure of international investigation or settlement if the examination by the procedure relates/related to the "same matter" within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It observes that application No. 8594/04 was submitted to the European Court by the same complainant, is based on the same facts, and relates to the same substantive rights as those invoked in the present communication. Having concluded that the "same matter" *is being examined* before the European Court, the Committee considers that the requirements of article 22, paragraph 5 (a), have not been met in the present case and that the complaint is thus inadmissible.[f]

6.3 The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the complainant.

Notes

[a] It would appear that the author is in hiding and is contactable through a friend.

[b] He has not submitted any evidence that he was tortured and this was not the basis of his asylum claim.

[c] The State party has provided copies of the application to the ECHR, a letter to the Court from counsel for the complainant dated 29 July 2006 and the ECHR's letter of 9 August 2006, to the State party, to demonstrate that the two complaints concern the same matter.

[d] The State party refers to the Committee's jurisprudence, *A.G. v. Sweden*, complaint No. 140/1999, paras. 6.2 and 7.

[e] Following inquiries made by the secretariat with one of the registrars of the ECHR, it was confirmed on 5 March 2003, that this case is still pending before the Court.

[f] *A.A. v. Azerbaijan*, complaint No. 247/2004, Decision adopted on 25 November 2005; *W.J. v. Austria*, complaint No. 5/1990, Decision adopted on 22 November 1990; *X. v. Canada*, complaint No. 26/1995, Decision adopted on 20 November 1995; and *A.G. v. Sweden*, complaint No. 140/1999, Decision adopted on 2 May 2000.
